



Board:
Mark Elam, Chairman Richard (Rick) Toomey, DHA, FACHE
David W. Gillespie, MD, Vice-Chairman Seema Shrivastava-Patel
Charles M. Joye II, P.E., Secretary Jim Creel, Jr.

South Carolina Board of Health and Environmental Control

Agenda November 8, 2018

***Call to Order – 10:00 a.m., Peebles Auditorium
South Carolina Department of Health and Environmental Control, 2600 Bull Street,
Columbia, S.C.***

1. **Public Hearing** for the Designation of all of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as a Capacity Use Area; Groundwater Use and Reporting Act, S.C. Code Title 49, Chapter 5.

The SC Board of Health and Environmental Control will recess immediately following the conclusion of Item 1 and will reconvene shortly thereafter in Room #3420 (Board Room) to continue the meeting.

2. Minutes of the October 12, 2018 meeting
3. Administrative and Consent Orders issued by Health Regulation
4. Administrative and Consent Orders issued by Environmental Affairs
5. **Public Hearing** for Notice of Final Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, Document No. 4815
6. Notice of Proposed Regulation for Amending Regulation 61-62, Air Pollution Control Regulations and Standards (exempt from General Assembly Review)
7. Request for a nine month extension by the Board of Certificate of Need (CON) SC-15-26 issued to Medical University Hospital Authority d/b/a Medical University of South Carolina (MUSC) for renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, the purchase of a Siemens Artis Q Biplane, and the renovation of the existing inpatient pharmacy.

8. Request for a nine month extension by the Board of Certificate of Need (CON) SC-16-19 issued to Trident Medical Center d/b/a Berkeley Medical Center (Trident) for construction of a new 50-bed hospital to include an MRI and CT Scanner.

9. Agency Affairs

Executive Session (if needed)

Adjournment

Note: The next scheduled meeting is December 13.

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 8, 2018

- (X) ACTION
() INFORMATION

I. SUBJECT: Public Hearing for the Designation of all of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as a Capacity Use Area.
Groundwater Use and Reporting Act, Title 49, Chapter 5.

II. FACTS:

1. In Capacity Use Areas, anyone who withdraws 3 million gallons of groundwater or more in any given month must receive a permit from DHEC. The permitting process allows DHEC to work with users of the groundwater resource to help ensure best management practices are utilized so that only the amount of groundwater necessary for that particular activity is used. The amounts of groundwater withdrawn are reported to DHEC yearly so that usage can be tracked. DHEC annually publishes water use data for the state.

The goal of the program is not to prevent the use of groundwater, but instead to help ensure that this finite and valuable resource is available for everyone to use by implementing best management practices. The legislative policy in the *Groundwater Use and Reporting Act* states: "The General Assembly declares that the general welfare and public interest require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources."

2. In a letter dated July 20, 2016, Aiken County Council requested that SCDHEC designate certain portions of Aiken County as a Capacity Use Area.

3. Subsequent to this request and in accordance with the Groundwater Use and Reporting Act, DHEC investigated the available groundwater information for Aiken County and the surrounding area to determine if Capacity Use Area designation is warranted. The following synopsis of the DHEC technical investigation is provided:

a) The major aquifers in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties used as drinking water supplies, agricultural irrigation, and industry are the Floridan/Gordon, Crouch Branch and McQueen Branch Aquifers.

b) Comprehensive groundwater investigations in the Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg County area have documented progressive groundwater level declines and an increasing demand on the groundwater resources as a result of growth and climatic stresses. Water levels in the region have dropped between 5 and 15 feet in the Floridan/Gordon, Crouch Branch and McQueen Branch Aquifers.

4. Based on the technical investigation, Department Staff propose that Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties be incorporated as the Western Capacity Use Area.

5. To ensure public participation in this process, the results of the DHEC investigation were presented in each county as public stakeholder meetings; and an additional meeting was held in Columbia, SC at the Central DHEC office.

6. A Notice of General Public Interest was published in the *State Register* first on May 25, 2018, and again on July 27, 2018 to announce a rescheduled Board Meeting on September 13, 2018. The resubmitted Notice of General Public Interest extended the comment period until August 27, 2018. The

initial comment period was from May 25, 2018 to June 25, 2018, which during that period 50 comments were received by the Department, and are provided and summarized within the Board Package. Due to Hurricane Florence, the scheduled Board Meeting on September 13, 2018 was canceled. Another Notice of Public Interest was published in the September 28, 2018 *State Register* for a meeting on November 8, 2018. The public comment period was not re-opened.

IV. ANALYSIS:

1. Section 49-5-60 states "In the State where excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source, including salt water intrusion, the board, after notice and public hearing, in accordance with the Administrative Procedures Act, shall designate a Capacity Use Area." Department staff concludes that the groundwater conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties satisfy the statutory requirements for Capacity Use Designation.

2. There are currently 304 active registered facilities in the Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg County area withdrawing greater than three (3) million gallons per month and reporting their groundwater usage to the Department. These existing facilities will be issued permits based upon historical groundwater usage.

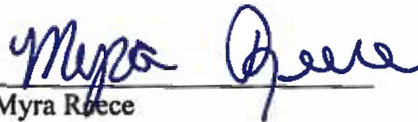
3. New groundwater withdrawers in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties exceeding withdrawals of three (3) million gallons or more in any given month will be required to obtain a permit from the Department in accordance with R.61-113, Groundwater Use and Reporting.

V. RECOMMENDATION:

Department staff recommends that, based upon the public hearing and the attached information, the Board find the need for and reasonableness of the proposed designation of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as the Western Capacity Use Area per the *Groundwater Use and Reporting Act*. Legislative approval is not required.



Dr. Michael Marcus
Chief
Bureau of Water



Myra Reece
Director
Environmental Affairs

Attachments

- A. Aiken County Council Resolution No. 16-07-141
- B. State Register Notice of Public Interest Published May 25, 2018
- C. State Register Notice of Public Interest Published July 27, 2018
- D. State Register Notice of Public Interest Published September 28, 2018
- E. Summary of Comments Received and Departmental Responses
- F. Copy of Applicable Law

** Encl/ Sent*

803 642 2012

Sponsor(s) : Development Committee
Committee Referral : Development Committee
Committee Consideration Date : July 19, 2016
Committee Recommendation : Approval
Effective Date : July 20, 2016

Cel

617 9526

RESOLUTION NO. 16-07-141
COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR AIKEN COUNTY

(Requesting that the Board of the South Carolina Department of Health and Environmental Control Designate Certain Portions of Eastern Aiken County as a Capacity Use Area Pursuant to Regulation R.61-113 and the South Carolina Code of Laws Section 49-5-10 and 49-5-60.)

WHEREAS:

1. Aiken County, due to its largely rural nature, relies very heavily on groundwater resources for both residential and commercial enterprises; and
2. The City of Aiken and many of the County's rural water districts draw from groundwater aquifers to serve their customers; and
3. Fresh drinking water is a precious natural resource that must be protected for future generations, economic development and agricultural use; and
4. Aiken County, like much of South Carolina, has experienced significant periods of low rainfall and even drought conditions over the past number of years; and
5. Aiken County has also seen the growth large corporate agricultural enterprises that have begun additional major withdrawals from limited groundwater sources; and
6. Section 49-5-10 and the following sections of the South Carolina Code of Laws, known as the Groundwater Use and Reporting Act, provides for a "Capacity Use Designation" by the South Carolina Department of Health and Environmental Control (SCDHEC) in areas where excessive groundwater withdrawal presents a potential adverse effect to natural resources or poses a threat to public health, safety and welfare; and
7. This Act, along with Regulation R.61-113 as promulgated by SCDHEC, provides the framework and guidelines under which SCDHEC can make a Capacity Use Designation; and
8. Recent events have given rise to concerns of citizens from eastern Aiken County and the Aiken County Council believes that a Capacity Use Designation for a part of that portion of Aiken County may be in order.

NOW THEREFORE BE IT RESOLVED BY THE AIKEN COUNTY COUNCIL THAT:

1. County Council hereby requests that the Board of the South Carolina Department of Health and Environmental Control designate the certain portion or portions of eastern Aiken County to be identified by the County Administrator upon consultation with County Council and SCDHEC as a Capacity Use Area pursuant to Regulation R.61-113 and the South Carolina Code of Laws Section 49-5-60.

Adopted at the regular meeting of Aiken County Council on July 19, 2016.

ATTEST:

Tamara Sullivan
Tamara Sullivan, Council Clerk

SIGNED:

Ronnie Young
Ronnie Young, Chairman

COUNCIL VOTE: Unanimous ABSTAINED: Siders ABSENT: Smith

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY OF PUBLIC COMMENT ON PROPOSED
DESIGNATION OF CAPACITY USE AREA PURSUANT TO S.C. CODE SECTION 49-5-60**

May 25, 2018

The South Carolina Department of Health and Environmental Control proposes the designation of all of Aiken County, Allendale County, Bamberg County, Barnwell County, Calhoun County, Lexington County, and Orangeburg County as part of the Western Capacity Use Area. Interested persons are invited to make oral or written comments on the proposed Capacity Use Area at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on August 9, 2018. The public hearing will be held in the Board Room of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00a.m. The Board's agenda will be published 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed Capacity Use Area to Mr. Robert Devlin at SCDHEC, Bureau of Water, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be received no later than 5:00p.m. on June 25, 2018. Comment received by the deadline date will be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

SCDHEC's technical report on groundwater conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties is available on the Internet at <http://www.dhec.sc.gov/Library/CR-012038.pdf>. A copy of the report may be obtained by contacting Ms. Amira Berezowska at 803-898-3563.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**NOTICE OF GENERAL PUBLIC INTEREST****NOTICE OF RESCHEDULED PUBLIC HEARING AND OPPORTUNITY OF PUBLIC COMMENT ON
PROPOSED DESIGNATION OF CAPACITY USE AREA PURSUANT TO
S.C. CODE SECTION 49-5-60**

July 27, 2018

The South Carolina Department of Health and Environmental Control (“Department”) proposes the designation of all of Aiken County, Allendale County, Bamberg County, Barnwell County, Calhoun County, Lexington County, and Orangeburg County as part of the Western Capacity Use Area. Interested persons are invited to make oral or written comments on the proposed Capacity Use Area at a public hearing to be conducted by the Board of Health and Environmental Control on September 13, 2018. This public hearing replaces the previously scheduled August 9, 2018, public hearing, which is hereby rescheduled for the September 13, 2018 date. The public hearing will be held in the Board Room of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00 a.m. The Board’s agenda will be published 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Due to the rescheduled public hearing, the Department also hereby extends the written comment period to August 27, 2018. Interested persons may submit written comments on the proposed Capacity Use Area to Mr. Robert Devlin at SCDHEC, Bureau of Water, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be received no later than 5:00 p.m. on August 27, 2018. Comments received pursuant to the now rescheduled August 9, 2018, public hearing notice need not be resubmitted. All comments received by the extended deadline date will be included in a Summary of Public Comments and Department Responses for the Board’s consideration at the public hearing.

SCDHEC’s technical report on groundwater conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties is available on the Internet at <http://www.dhec.sc.gov/Library/CR-012038.pdf>. A copy of the report may be obtained by contacting Ms. Amira Berezowska at 803-898-3563.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

NOTICE OF RESCHEDULED PUBLIC HEARING AND OPPORTUNITY OF PUBLIC COMMENT ON PROPOSED DESIGNATION OF CAPACITY USE AREA PURSUANT TO S.C. CODE SECTION 49-5-60

September 28, 2018

The South Carolina Department of Health and Environmental Control (“Department”) proposes the designation of all of Aiken County, Allendale County, Bamberg County, Barnwell County, Calhoun County, Lexington County, and Orangeburg County as part of the Western Capacity Use Area. Interested persons are invited to make oral or written comments on the proposed Capacity Use Area at a public hearing to be conducted by the Board of Health and Environmental Control on November 8, 2018. This public hearing replaces the previously scheduled September 13, 2018, public hearing, which is hereby rescheduled for the November 8, 2018, date. The public hearing will be held in the Board Room of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00 a.m. The Board’s agenda will be published 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

SCDHEC’s technical report on groundwater conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties is available on the Internet at <http://www.scdhec.gov/sites/default/files/Library/CR-012038.pdf>. A copy of the report may be obtained by contacting Ms. Amira Berezowska at 803-898-3563.

Summary of Comments for Proposed Western Capacity Use Area

- 72 entities support the Designation
- 2 entities supports the Designation with conditions
- 2 entities do not support the Designation

Summary of Comments Received:

1. Support Designation (Concerned Citizens Safeguarding South Carolina Water, City of Aiken, Aiken County, Aiken Land Conservancy, Edisto Riverkeeper, Savannah Riverkeeper, Congaree Riverkeeper, and many citizens)
2. Support with Conditions (South Carolina Groundwater Association, Mr. Buck Sowers)
3. Don't Support Designation (SC Farm Bureau, Palmetto Agribusiness Council)
4. "Without this critical designation, regulators would be severely handicapped in their ability to begin to address the eminent water shortage issues in Aiken County."
5. SCDNR recommended in 2004 that the entire Coastal Plain be designated a capacity use area
6. Concerned about falling water-levels, need to take action before too late (like California)
7. Water needs to be treated like a finite resource in order to safeguard use in the future
8. Capacity Use Designation has proven successful in SC, no need to wait for crisis
9. Increased population, withdrawal, and drought all threatening groundwater and surface water
10. Agricultural operations are impacting groundwater supplies
11. Need to determine how much water is there, and treat as a "common good"
12. Petition signed from Aiken County Residents in support of Capacity Use Area
13. Decisions should be made after a comprehensive State Water Plan is developed, and after the groundwater studies conclude
14. Agricultural operations are going to be negatively affected by this designation, designation should not be considered because study was initiated by those against farms in Aiken County
15. Groundwater regulation is bad for businesses (short permit cycles provide limited certainty for industries)

Questions and Department Responses:

- Who composes the Board, how are they selected, and who decided the membership?
 - Mark Elam, Rick Toomey, Seema Shrivastava-Patel, Charles M. Joye II, David W. Gillespie, and Jim Creel Jr. currently reside on the DHEC Board, they are appointed for 4 year terms based upon the State's 7 Congressional Districts
- How many people make up the Board?
 - There are currently 6 Board members, with 2 positions currently vacant
- Will the Board decide the depth, location, and priority of future wells?
 - No the Board is only involved in the approval of a designation, upon designation the decisions regarding future wells will be handled by DHEC permitting staff
- Who would a landowner, farmer etc. appeal to should they disagree with, feel wronged, or excluded by this Board's decisions?
 - A person or entity affected may appeal a decision of the Board on a Capacity Use Area designation within thirty (30) days after filing of the decision to the Court of Common Pleas of any county which is included in whole or in part within the disputed Capacity Use Area. The Department shall certify to the Court the record in the hearing. The Court shall review the record and the regularity and the justification for the decision. The Court may not substitute its judgment for that 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.
- How much input has been given or interest shown by our elected representatives during this planning stage?
 - The Aiken County Council, the City of Aiken, and a few State Representatives have been involved in the process.
- Is there going to be a first come first serve system?
 - New applications are reviewed based on proximity to existing users, and projected impacts on groundwater withdrawals.

South Carolina Legislature

South Carolina Law > Code of Laws > Title 49

South Carolina Code of Laws Unannotated

Title 49 - Waters, Water Resources and Drainage

CHAPTER 5

Groundwater Use and Reporting Act

Editor's Note

2000 Act No. 366, Section 2, amended the Chapter title. The former title was: "Groundwater Use Act".

SECTION 49-5-10. Short title.

This chapter may be cited as the Groundwater Use and Reporting Act.

HISTORY: 1962 Code Section 70-31; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-20. Legislative declaration of policy.

The General Assembly declares that the general welfare and public interest require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources.

HISTORY: 1962 Code Section 70-32; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-30. Definitions.

Unless the context otherwise requires, as used in this chapter:

- (1) "Aquifer" means a geologic formation, group of these formations, or part of a formation that is water bearing.
- (2) "Aquifer storage and recovery" or "ASR" means a process by which water is injected into an aquifer for storage and then subsequently withdrawn from the same aquifer from the same well or other nearby wells.
- (3) "Board" means the Board of the Department of Health and Environmental Control.
- (4) "Coastal Plain" means:
 - (a) all of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter, and Williamsburg counties; and
 - (b) those portions of Chesterfield, Edgefield, Kershaw, Lexington, Richland, and Saluda counties east or southeast of the fall line as identified on the best available geologic map.
- (5) "Department" means the Department of Health and Environmental Control.
- (6) "Dewatering operation" means an operation that is withdrawing groundwater from an aquifer for the purpose of draining an excavation or preventing or retarding groundwater flow into an excavation. This operation includes, but is not limited to, mining, water and sewer line construction, and excavating for a building foundation.
- (7) "Emergency withdrawal" means the withdrawal of groundwater, for a period not exceeding thirty calendar days, for the purpose of fire fighting, hazardous substance or waste spill response, or both, or other emergency withdrawal of groundwater as determined by the department.
- (8) "Existing groundwater withdrawer" means a groundwater withdrawer withdrawing groundwater or a proposed groundwater user with its wells under construction before January 1, 2000.
- (9) "Flowing well" means a well releasing groundwater under such pressure that pumping is not necessary to bring it above the ground surface.
- (10) "Groundwater" means water in the void spaces of geologic materials within the zone of saturation.
- (11) "Groundwater withdrawal permit" means a permit issued by the department to groundwater withdrawers in a designated capacity use area for the withdrawal of groundwater.
- (12) "Groundwater withdrawer" means a person withdrawing groundwater in excess of three million gallons during any one month from a single well or from multiple wells under common ownership within a one-mile radius from any one existing or proposed well.
- (13) "New groundwater withdrawer" means a person who becomes a groundwater withdrawer after December 31, 1999, except for a proposed groundwater withdrawer with its wells under construction before January 1, 2000.
- (14) "Nonconsumptive use" means the use of water from an aquifer that is returned to the aquifer from which it was withdrawn, at or near the point from which it was withdrawn, without diminishing the quantity any more than three million gallons in any one month or without substantial impairment in quality.
- (15) "Permit to construct" means a permit issued by the department after consideration of proposed well location, depth, rated capacity, and withdrawal rate.
- (16) "Permittee" means a person having obtained a permit to construct or a groundwater withdrawal permit issued in accordance with Sections 49-5-60 and 49-5-110.
- (17) "Person" means an individual, firm, partnership, association, public or private institution, municipality or political subdivision, governmental agency, public water system, or a private or public corporation organized under the laws of this State or any other state or county.
- (18) "Public water system" means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act.

(19) "Rated capacity" means the amount, in gallons per minute (gpm), of groundwater that is capable of being withdrawn from the completed well with the pump installed.

(20) "Surface water" means all water which is open to the atmosphere and subject to surface runoff which includes lakes, streams, ponds, and reservoirs.

(21) "Type I well" means a well constructed with an open hole in a bedrock aquifer.

(22) "Well" means an excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed for the purpose of locating, testing, or withdrawing groundwater or for evaluating, testing, developing, draining, or recharging a groundwater reservoir or aquifer or that may control, divert, or otherwise cause the movement of groundwater from or into an aquifer.

HISTORY: 1962 Code Section 70-33; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-40. Department to establish groundwater management program; withdrawers to register sources and report use.

In order to carry out the policy as stated in Section 49-5-20, the General Assembly finds that the department must establish and implement an effective statewide groundwater management program. To implement this program, all groundwater withdrawers shall register their groundwater sources with, and report their groundwater use to, the department.

HISTORY: 1962 Code Section 70-34; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-50. Department to monitor groundwater withdrawals; notice of construction of new well or increase in capacity of existing well; public notice.

(A) The department shall assess, notice, and monitor groundwater withdrawals in this State pursuant to this chapter.

(B) A groundwater withdrawer or proposed groundwater withdrawer outside of a designated capacity use area in the Coastal Plain shall notify the department of its intent to construct a new well, or increase the rated capacity of an existing well, at least thirty days before initiating the action. This notification must be made on forms provided by the department.

(C) The department shall develop a process for notifying potentially affected existing withdrawers and the public of all notices received pursuant to subsection (B).

HISTORY: 1962 Code Section 70-35; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-60. Capacity use area designation; notice and public hearing; development of groundwater management plan; groundwater withdrawal permits; appeals; grounds for reversal or modification.

(A) In the State where excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source, including salt water intrusion, the board, after notice and public hearing, in accordance with the Administrative Procedures Act, shall designate a capacity use area. The department, local government authorities, other government agencies, or groundwater withdrawers may initiate the capacity use area designation process. The notice and public hearing must be conducted such that local government authorities, groundwater withdrawers, or the general public may provide comments concerning the capacity use area designation process. A capacity use area must be designated by the board based on scientific studies and evaluation of groundwater resources and may or may not conform to political boundaries.

(B) After notice and public hearing, the department shall coordinate the affected governing bodies and groundwater withdrawers to develop a groundwater management plan to achieve 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.

(C) Once the board approves the groundwater management plan for a designated capacity use area, each groundwater withdrawer shall make application for a groundwater withdrawal permit. The department shall issue groundwater withdrawal permits in accordance with the approved plan.

(D) A person or entity affected may appeal a decision of the board on a capacity use area designation within thirty days after the filing of the decision to the court of common pleas of any county which is included in whole or in part within the disputed capacity use area. The department shall certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the decision. The court may not substitute its judgment for that 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:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the record; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1962 Code Section 70-36; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-70. Exemptions.

(A) The following are exempt from this chapter:

- (1) emergency withdrawals of groundwater;
- (2) any person withdrawing groundwater for nonconsumptive uses;
- (3) a person withdrawing groundwater for the purpose of wildlife habitat management;
- (4) A person withdrawing groundwater at a single family residence or household for noncommercial use.

(B) The following are exempt from the permitting requirements of Section 49-5-100 and the public notification requirements of Section 49-5-50:

- (1) dewatering operations at mines;
- (2) all other dewatering operations;
- (3) Type I wells installed into crystalline bedrock in the Coastal Plain Groundwater Management Area;
- (4) groundwater withdrawer constructing a new well to replace an existing well.

(C) Aquifer storage and recovery wells are exempt from the requirements of this chapter if:

- (1) a permit in accordance with the Underground Injection Control Regulations, Regulation 61-87, S. C. Code of Regulations, is obtained from the department; and
- (2) the amount of water withdrawn does not exceed the amount of water injected.

(D) The department may exempt wells of diminutive yield from the requirements of this chapter if these wells are used for purposes other than the wells which result in a person being considered a groundwater user.

HISTORY: 1962 Code Section 70-37; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-80. Registration of groundwater withdrawers; new wells.

(A) An existing groundwater withdrawer in the State shall register its groundwater withdrawal and subsequent use with the department on forms provided by the department no later than January 1, 2000.

(B) A new groundwater withdrawer in the State shall register its groundwater withdrawal and subsequent use with the department on forms provided by the department before becoming a groundwater withdrawer.

(C) A groundwater withdrawer shall register any additional wells within thirty days after initiating use of the wells.

HISTORY: 1962 Code Section 70-39; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-90. Reports of quantity of water withdrawn; methods for determining quantity.

(A) Every permitted and registered groundwater withdrawer in the State shall annually before January thirty file with the department a report on forms furnished by the department of the quantities of groundwater withdrawn.

(B) The quantity of groundwater withdrawn must be determined by one of the following:

- (1) flow meters accurate to within ten percent of calibration;
- (2) the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;
- (3) the rated capacity of a cooling system;
- (4) any standard or method employed by the United States Geological Survey in determining such quantities; or
- (5) any other method approved by the department which will provide reliable groundwater withdrawal data.

(C) The groundwater withdrawer is not required to submit the groundwater withdrawal report required by subsection (A) if the monthly quantity withdrawn from each well is being reported to the department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

HISTORY: 1962 Code Section 70-40; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-100. Permits; temporary permits; revocation; process for public participation in permitting process to be developed; contested case hearing.

(A) Before a groundwater withdrawer or proposed groundwater withdrawer in a designated capacity use area can construct a new well or increase the rated capacity of an existing well, an application for a permit to construct must be made to, and a permit to construct obtained from, the department unless exempt pursuant to Section 49-5-70.

(B) Before a person may become a groundwater withdrawer in a designated capacity use area, an application for a groundwater withdrawal permit must be made to, and a groundwater withdrawal permit obtained from, the department.

(C) The department may grant a temporary groundwater withdrawal permit for up to one hundred eighty days or until a final decision is made on the application if an imminent hazard to public health exists or if an applicant demonstrates that physical or financial damage has occurred, or will occur, if a temporary permit is not granted. The issuance of a temporary permit does not guarantee the issuance of a groundwater withdrawal permit.

(D) The department may revoke a permit to construct or a groundwater withdrawal permit if it determines information in the permit application is false or the permittee fails to comply with the conditions of the permit.

(E) The department may revoke a temporary groundwater withdrawal permit if the permittee fails to adhere to the conditions of the temporary permit or provide timely response to requests for actions for information made pursuant to the application review.

(F) The department shall develop a public participation process for the permitting of new wells or for an increase in the rated capacity of a well and for groundwater withdrawal.

(G) The department is authorized to develop a "General Permit" for groundwater withdrawal activities.

(H) A person or entity aggrieved by the department's decision on any permit application or revocation pursuant to this section may request a contested case hearing. The contested case must proceed in accordance with Articles 3 and 5, Chapter 23 of Title 1.

HISTORY: 1962 Code Section 70-41; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-110. Powers of department.

The department may:

- (1) adopt and modify regulations to implement the provisions of this chapter;
- (2) issue, modify, revoke, or deny construction and groundwater withdrawal permits;
- (3) perform acts and issue orders as necessary to carry out the purposes and requirements of this chapter;
- (4) administer and enforce this chapter and regulations promulgated and orders issued or effective under this chapter;
- (5) present proper identification and then enter upon any land or water for the purpose of conducting an investigation, examination, or survey contemplated by this chapter;
- (6) subpoena and require the attendance of witnesses and the production of books and papers by witnesses pertinent to investigations and inquiries the department is authorized to conduct under this chapter, and examine witnesses and those public records as necessary;
- (7) enter into agreements, contracts, memoranda of understanding, or cooperative arrangements under terms and conditions as the department considers appropriate with any person necessary to carry out the intent of this chapter;

(8) distribute to, and receive financial and technical assistance from, public or private agencies, institutions of higher education, and the federal government;

(9) participate in programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

(10) evaluate and conduct, or have conducted, investigations regarding aquifer sampling, aquifer characteristics, hydrogeologic modeling, and other engineering, scientific, and economic analysis, including the establishment of minimum aquifer levels to carry out the provisions of this chapter. In conducting such investigations, the department will consider and utilize, as appropriate, reports, research, and studies of federal, state, or local agencies and departments of government. The results of these investigations shall serve as the basis for the evaluation of applications and the determination of applicable permit conditions.

The department shall negotiate agreements, accords, or compacts on behalf of and in the name of the State and with other states or the United States, or both, with an agency, department, or of either, or both, relating to withdrawal or diversion of groundwater that impacts the groundwater of this State, or are connected to those waters. In negotiating such agreements, the department will consider, as appropriate, information provided by potentially affected federal, state, or local agencies and departments of government and will advise such entities of the final department action. An interstate compact made by the department by authority of this chapter is subject to approval by joint resolution of the General Assembly. The department shall represent this State in connection with groundwater withdrawals, diversions, or transfers occurring in other states which may affect this State.

HISTORY: 1962 Code Section 70-38; 1969 (56) 640; 1989 Act No. 133, Section 1; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-120. Violations of chapter or regulation; civil and criminal penalties.

(A) A person wilfully violating a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars a day for each violation.

(B) A violation of a provision of this chapter or a regulation promulgated under the authority of this chapter renders the violator liable to the State for a civil penalty of not more than one thousand dollars a day for each violation.

(C) The department may administer penalties as otherwise provided herein for a violation of this chapter, an order, regulation, standard, permit, or permit condition or may request the Attorney General to commence an action under this subsection in an appropriate court of the State to secure a penalty.

(D) The department may cause to be instituted a civil action in a court of applicable jurisdiction for injunctive relief to prevent violation of this chapter or an order issued pursuant to this chapter.

(E) Civil penalties collected pursuant to this section must be deposited in the general fund of the State.

HISTORY: 1962 Code Section 70-42; 1969 (56) 640; 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-130. Wells not requiring pumps; restriction of flow; promulgation of regulations.

Wells that are flowing by releasing groundwater under such pressure that pumping is not necessary to bring it above the ground surface at a rate of greater than five thousand gallons a day at any time are an unreasonable use of groundwater constituting waste and are prohibited, except that the water from these wells may be utilized to the extent actually necessary for a specific use. These wells must be fitted with a mechanism to restrict the flow of water if the flow is in excess of that necessary for the specific use. The department may promulgate regulations to govern use of these wells in this State.

HISTORY: 1990 Act No. 585, Section 1; 1993 Act No. 181, Section 1246; 2000 Act No. 366, Section 2.

SECTION 49-5-140. Effect of chapter on rights of use of surface water.

Nothing contained in this chapter changes or modifies existing common or statutory law with respect to the rights of the use of surface water in this State.

HISTORY: 2000 Act No. 366, Section 2.

SECTION 49-5-150. Existing capacity use areas.

Existing capacity use areas and requirements as specified in Regulations 121-1 and 121-2, S. C. Code of Regulations, remain in effect until the department promulgates regulations under the authority of this chapter.

HISTORY: 2000 Act No. 366, Section 2.



Fact Sheet - August 2018 Western Capacity Use Area Designation

The purpose of this fact sheet is to summarize South Carolina's Law on Capacity Use Permitting, and the request to designate the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg as a Capacity Use Area.

What is *Capacity Use Designation*?

Title 49 Chapter 5 of the South Carolina Code of Laws states "...groundwater resources of the state be put to *beneficial* use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the *development* and *use* of water resources."

- Where large amounts of groundwater pumping has caused or will cause a problem such as saltwater contamination or lowering water-levels in nearby wells, a **Capacity Use Area** may be designated by DHEC. There are currently four Capacity Use Areas in South Carolina, the Lowcountry (Beaufort, Colleton, Hampton, and Jasper counties), the Waccamaw (Georgetown and Horry counties), the Trident (Berkeley, Charleston, and Dorchester counties), and the Pee Dee (Darlington, Dillon, Florence, Marion, Marlboro, and Williamsburg counties). The request to designate a Capacity Use Area can be initiated by a local government, DHEC, other government agencies, or groundwater withdrawers.

What is the purpose of *Capacity Use Designation*?

- Most importantly, the goal of the Capacity Use Program is not to prevent the use of, or limit access to the groundwater resource, but instead to ensure that this important resource is available for everyone to use. Within a Capacity Use Area, permits are required for pumping large quantities of groundwater. Permitting groundwater users allows DHEC to work with all users of the groundwater resource to manage pumping and minimize potential problems with local aquifers.

What are the requirements in a *Capacity Use Area*?

- Within a Capacity Use Area, the regulatory requirements apply to large groundwater users. Anyone pumping 3 million gallons or more in any given month must be permitted by DHEC. Groundwater pumping is permitted based on reasonable use requirements, and the need(s) of a particular activity or industry. Mandatory reporting of groundwater use ensures permit compliance and allows DHEC, local government agencies, and all interested stakeholders to determine historical use and establish goals for future planning decisions. DHEC routinely publishes water use data for the state.

Will I have a voice in the permitting process?

- Yes, all interested parties and stakeholders will be invited for input in the development of local Groundwater Management Plans designed to meet the needs of each Capacity Use Area. The local Groundwater Management Plan will help guide DHEC's permitting decisions, require water conservation by groundwater pumpers, and verify that only the amount of groundwater needed for a particular activity is used.

Why is the *Western Capacity Use Area* being considered?

- Reported groundwater withdrawals have steadily increased in the past 20 years, and reciprocal groundwater level declines have been noted. Demands on groundwater resources are expected to increase, and declines will be expected as well. Rising usage and decreasing water levels pose adverse effects on the aquifers as well as groundwater users. From the *Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties* it has been determined that these counties have developed and utilized groundwater to the degree that coordination and regulation of groundwater supplies may be needed pursuant to the Groundwater Use and Reporting Act, Section 49-5-60.

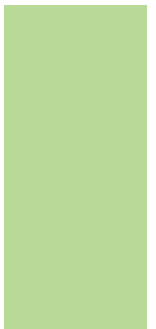
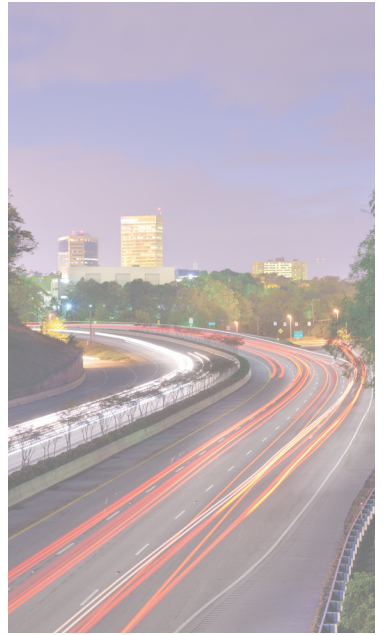


A Preliminary Assessment of the Groundwater Conditions

in Aiken, Allendale, Bamberg, Barnwell, Calhoun,
Lexington, and Orangeburg Counties, South Carolina



MAY 2017



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Executive Summary

The South Carolina Department of Health and Environmental Control (Department), in cooperation with the South Carolina Department of Natural Resources (SCDNR), has been evaluating groundwater conditions in the western Coastal Plain region of South Carolina in a series of investigations. SCDNR has previously recommended (SCDNR, 2004) the entire Coastal Plain province should be designated a Capacity Use Area in order to protect aquifer systems and ensure long-term sustainability of the groundwater resources. On July 19, 2016, Aiken County Council requested that portions of Aiken County be designated as a Capacity Use Area.

The Department has reviewed previously published reports on local groundwater conditions by the SCDNR and USGS in conjunction with reported groundwater withdrawal data for the counties of this region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg) to assess the current groundwater conditions in the area. This review indicates that water level declines in the aquifer systems of concern have been influenced by an increase in population, public water supply use and agricultural activities using groundwater and a series of long-standing droughts that have reduced recharge to the aquifer systems.

The preliminary data compiled in this report indicates that the entire Western Region (Figure 1 on page 3) meets the statutory requirements to be designated as a Capacity Use Area as shown in Figure 1 (the whole of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties) based on the following:

- The aquifers are interconnected beneath the counties in this region (Figure 3 on page 5).
- There is current documented increased demand and potential increases in future demand.
- Estimated declines in groundwater levels as follows:
 - ↳ Since 1998, in the Floridan/Gordon aquifers: Allendale and Barnwell Counties (8 feet).
 - ↳ Since 2001, in the Black Creek/Crouch Branch aquifer: Aiken County (< 5 feet), Allendale, Barnwell and Lexington Counties (5 feet), Bamberg County (10 feet), Calhoun and Orangeburg Counties (12 feet).
 - ↳ Since 2001, in the Middendorf/McQueen Branch aquifer: Aiken County (5 feet), Barnwell and Lexington Counties (10 feet), Allendale County (12 feet), Bamberg, Calhoun and Orangeburg Counties (15 feet).

Based on the preliminary data available to the Department, which have been summarized in this report, Aiken County along with Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg counties have developed and utilized groundwater to the degree that coordination and regulation of groundwater supplies may be needed pursuant to the Groundwater Use and Reporting Act, Section 49-5-60. As such, this preliminary data is provided to facilitate the gathering of public input and any additional data or information that will help inform the potential designation of these counties as the Western Capacity Use Area.

Introduction

The South Carolina Department of Health and Environmental Control (Department) received a formal request on July 19, 2016 from Aiken County Council to investigate and designate a Capacity Use Area within eastern Aiken County, South Carolina. Section 49-5-60 of the Groundwater Use and Reporting Act states in part that... *“In the state where excessive groundwater withdrawal present potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source... the board, after notice and public hearing...shall designate a capacity use area.”* The notice and public hearing must be conducted such that local government authorities, groundwater withdrawers, or the general public may provide comments concerning the capacity use designation process. A Capacity Use Area must be designated by the board based on scientific studies and evaluation of groundwater resources and may or may not conform to political boundaries. Designation as a Capacity Use Area requires groundwater withdrawers within the Capacity Use Area to apply for and obtain a permit from the Department.

A groundwater user is defined as *“a person withdrawing groundwater in excess of three million gallons during any one month from a single well or from multiple wells under common ownership within a one-mile radius from any one existing or proposed well.”* The permitting process is intended to allow the Department to coordinate and work with users of the groundwater resource to more effectively manage withdrawals to control and minimize adverse effects on the local aquifers. Withdrawals are permitted on reasonable use requirements as outlined in the regulation and demonstrated need(s) of a particular activity or industry. Mandatory reporting of groundwater use ensures permit compliance and allows the Department, local government agencies, and all interested stakeholders to determine historical use trends and establish criteria for future planning decisions.

Figure 1 (on the next page) shows the proposed Western Capacity Use Area which covers Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties.

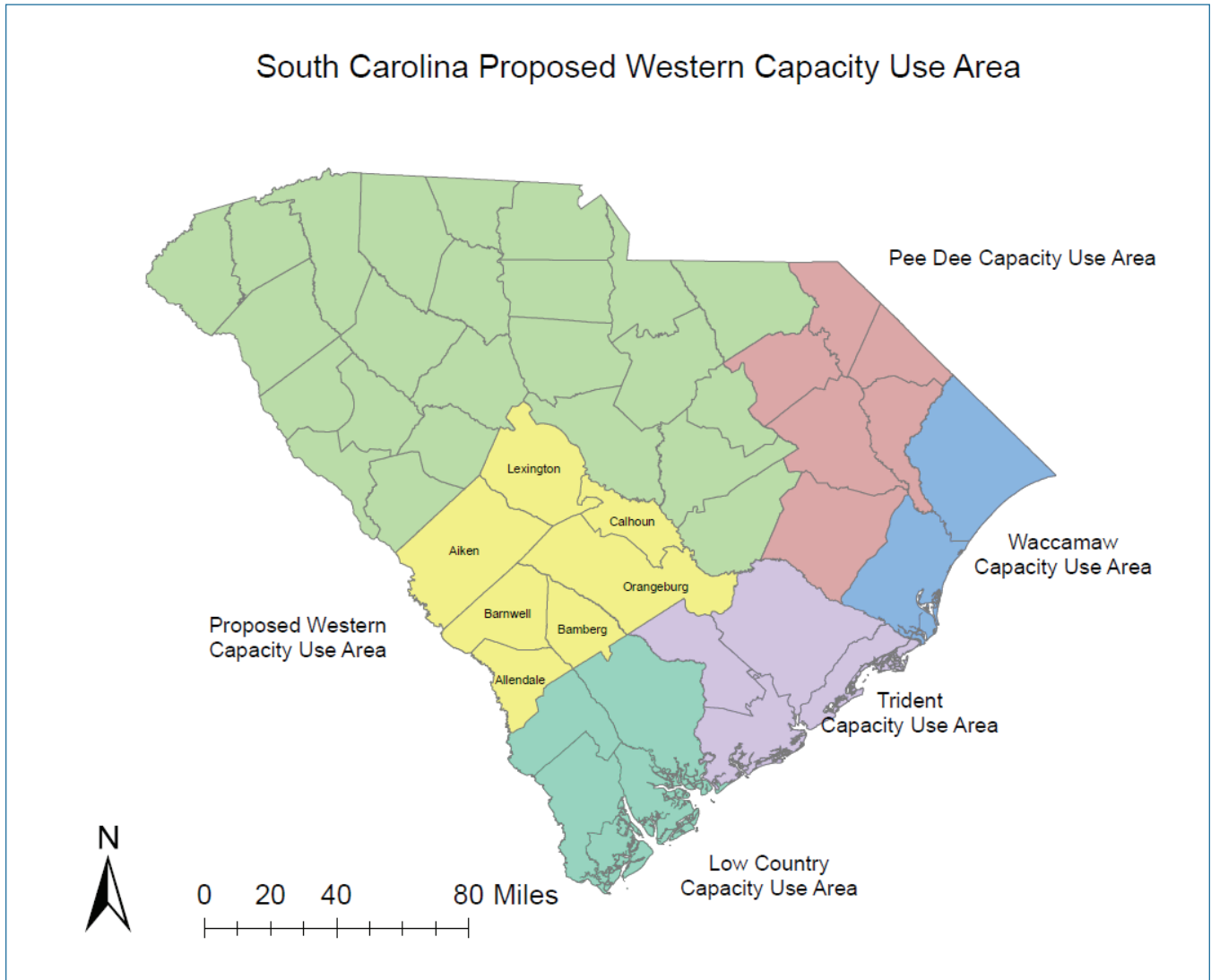


Figure 1: Existing Capacity Use Areas and proposed Western Capacity Use Area.

Western Region Climate

The general climate of South Carolina is influenced by a number of factors, including its location in the mid-latitudes and proximity to the Atlantic Ocean. The mid-latitude location provides for varying intensities of solar radiation during the year, resulting in four distinct seasons (summer, fall, winter, spring). The Western Region of the state is classified as humid subtropical. Average temperature in the region is 60-65 degrees Fahrenheit. According to the State Climatologist's office, the normal annual precipitation for the Western region of the Coastal Plain is between 45-50 inches. However, this area of the State has experienced periods of drought where significantly less precipitation has occurred, in particular, 2001, 2007 and more recently 2011. Figure 2 (on the next page) shows total yearly precipitation for this area of the State from 1980 to 2015.

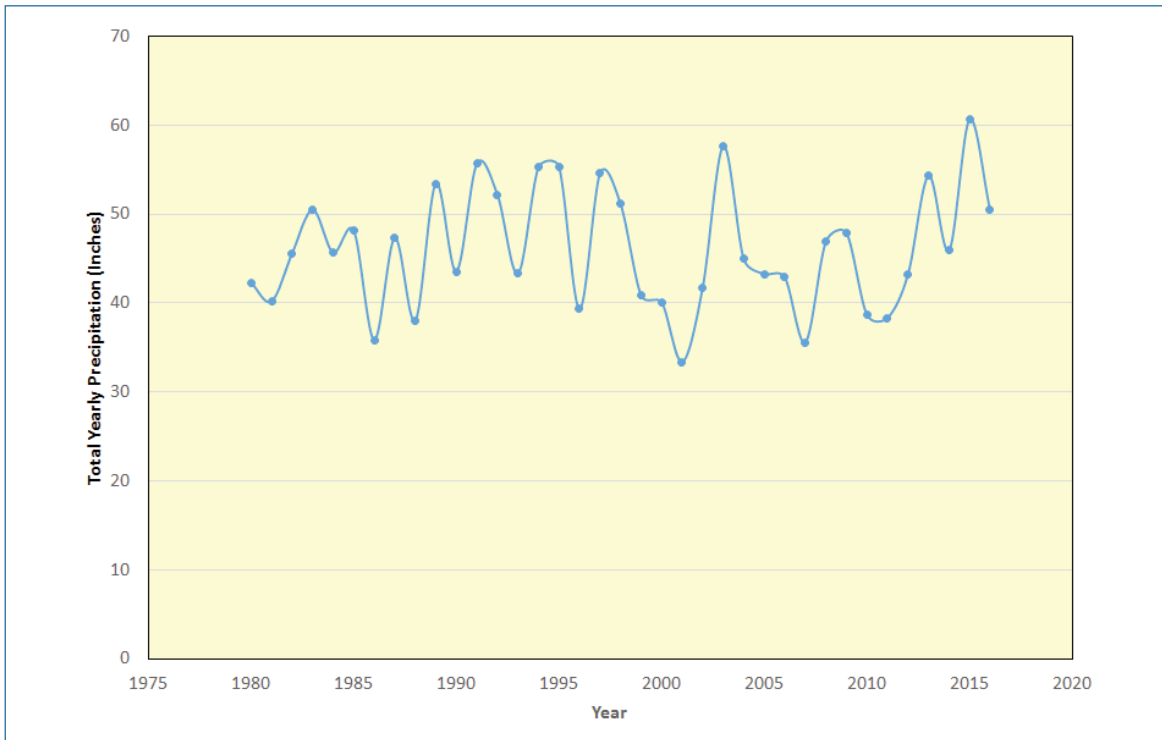


Figure 2: Yearly precipitation totals for South Carolina Region 6, National Climate Data Center.

Geohydrologic Framework

The geology and hydrogeology of the proposed Western Capacity Use Area of South Carolina is described in detail by United States Geological Survey (USGS) professional paper (pp) by Bruce Campbell et al. (2010), which incorporated 38 core holes and 68 water wells across the South Carolina Coastal Plain. In general terms, the aquifer systems range in age from Late Cretaceous to Tertiary (McQueen Branch, Crouch Branch, Gordon, Floridan, and Surficial) and overlay crystalline bedrock between Paleozoic and Triassic age. Overall, the lithologies of the aquifers are predominantly composed of sands and silts/muds, with some limestone. These are described as being formed in a transitional depositional environment, ranging from continental to marine (Campbell, et al., 2010). The units form a sedimentary wedge that thickens from a feather edge at the Fall Line to greater than 4000 feet down dip at the coastline (**Figure 3**).

The identified confining units separating the aquifer systems are not as well defined in the proposed Capacity Use Area (i.e. little or no distinct separation between aquifer systems), while the McQueen Branch and Crouch Branch aquifers are reported to be the more productive units in this area (Campbell, et al., 2010). The recharge zone for these aquifers is at the Fall Line and the surficial aquifer discharges to surface water. Specific annual groundwater recharge rates have been calculated by USGS to be in the range of approximately 13 to 15 inches per year. In 2004, the Crouch Branch and McQueen Branch are reported to have had withdrawal rates of 1.27 and 5.41 million gallons per day (MGD), respectively, and surface discharge of the surficial aquifer at around 6.1 MGD (Campbell, et al., 2010).

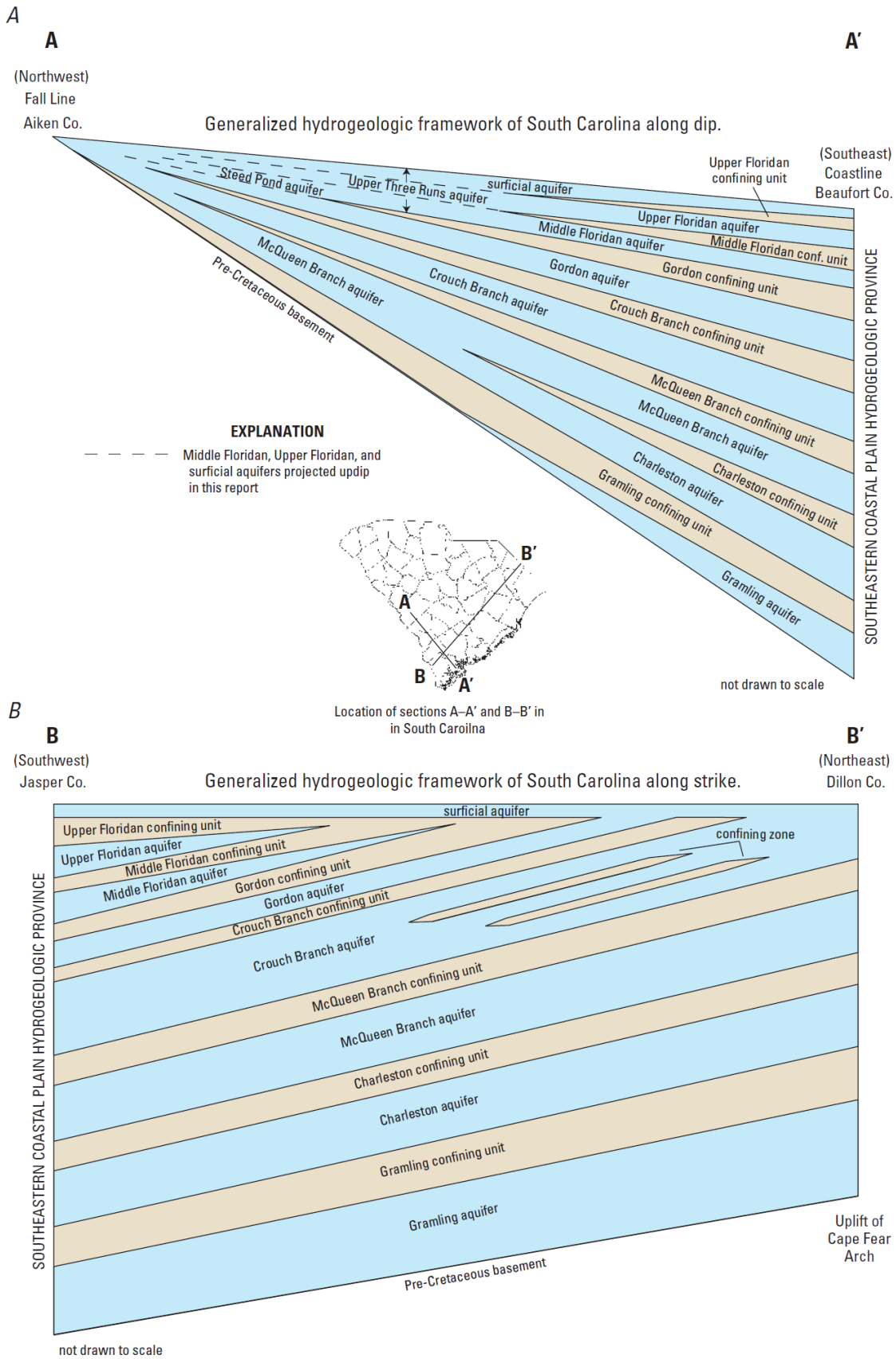


Figure 3: Hydrogeologic framework of South Carolina (Campbell, et al., 2010).

Historical Problems

Floridan and Gordon Aquifers

The shallower aquifer systems are hydrologically connected in the up-dip region of the proposed Capacity Use Area (see **Figure 3**), and therefore respond as unconfined aquifers in this region. Precipitation events generate the greater portion of recharge for the aquifer systems in the area, with the majority subsequently discharged through evapotranspiration and to the numerous creeks, streams, and rivers which dissect the geographical area. The groundwater flow paths in the shallow system are typically short, which in turn generate relatively high groundwater flow rates (Aucott W. R., 1988). Specific annual groundwater recharge rates have been calculated by USGS to be in the range of approximately 13 to 15 inches per year. Employing a porosity of 30 to 35 percent for the aquifers produces a water level rise (instantaneous) in the saturated thickness of the aquifer(s) of approximately 3.6 to 4.1 feet (Harrelson, Falls, & Prowell, 2002). The aquifers in the proposed Capacity Use Area respond more quickly to variations in recharge (precipitation and evapotranspiration rates) over time due to their relative shallow nature and relatively high transmissivities (Aucott W. R., 1988). Seasonal fluctuations in groundwater levels in the various aquifers are common due to increased use of groundwater for public consumption and irrigation during summer months. As use increases through spring into summer, groundwater levels decline. As use decreases in the fall and winter, the groundwater levels typically recover. An example of this response to seasonal fluctuations in groundwater demand is shown in Figure 8. While this well (AIK-0344) is screened in the Crouch Branch aquifer, this is a common response seen in the Coastal Plain aquifer systems to seasonal fluctuations in groundwater demand.

The South Carolina Department of Natural Resources (SCDNR) has collected long-term groundwater level from several locations in the Western region of the State. These include several monitoring wells in the Gordon aquifer, BRN-0352, ORG-0430, and ALL-0375. Water levels can be seen in Figures 4, 5, and 6, and all 3 of these wells indicate some degree of water level decline imprinted on seasonal variability. Previous work by SCDNR has shown water levels in the Gordon aquifer have declined in Allendale by approximately 8 feet and up to approximately 7 feet in Barnwell Counties since the mid-1990s (Harder, Gellici, & Wachob, 2012).

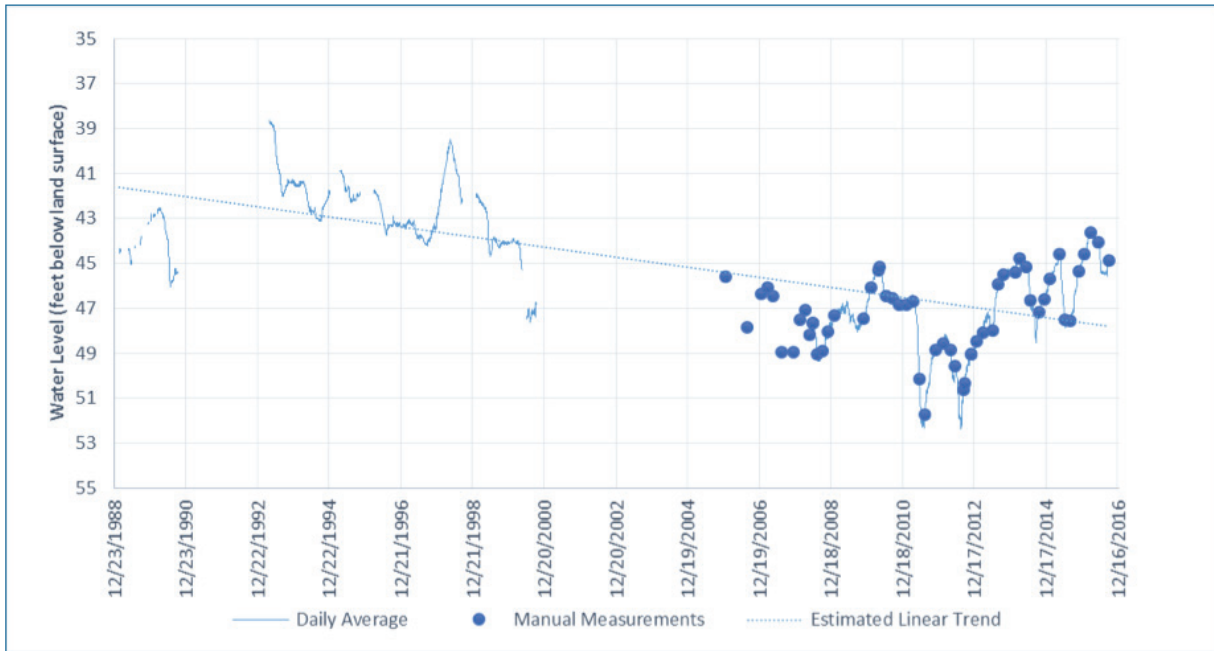


Figure 4: Barnwell County, BRN-0352 Gordon aquifer average daily groundwater levels.

ORG-0430 (**Figure 5**) water levels indicate temporal fluctuations which may be seasonally influenced, with measured levels from 81.53 to 97.7 feet below land surface. The probable seasonal fluctuation is observed as lows in the late summer early fall months (August-October) and its highest levels in the spring months (March-May).

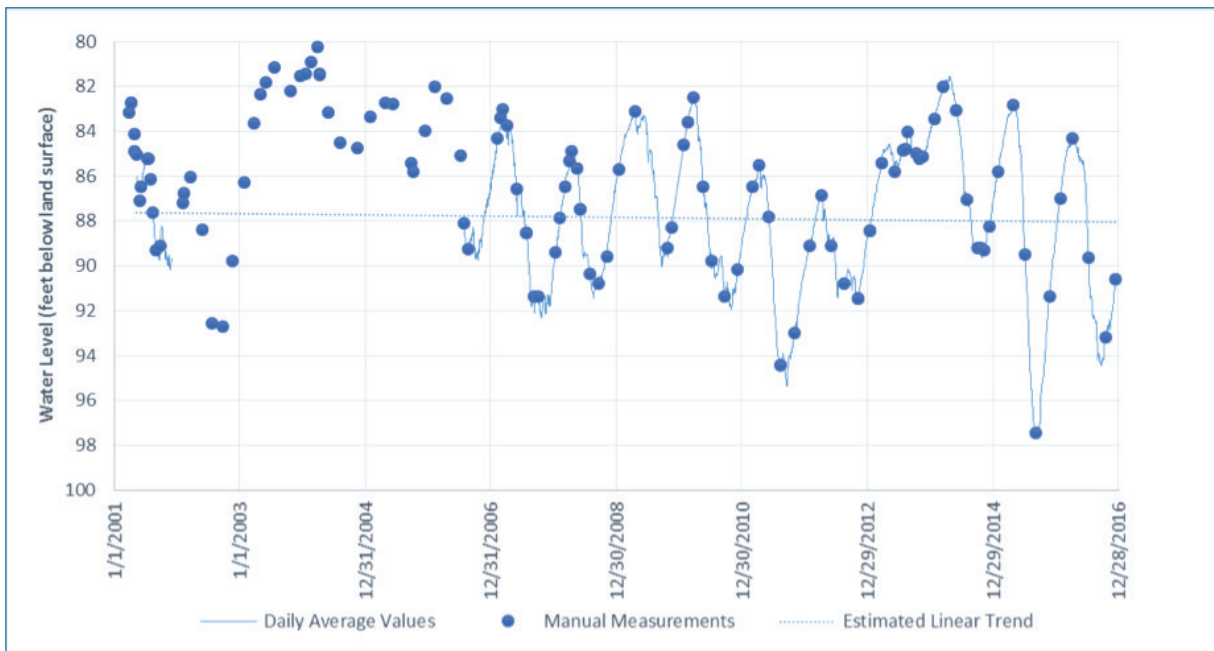


Figure 5: Orangeburg County, ORG- 0430 Gordon aquifer average daily groundwater levels.

ALL-0375 (**Figure 6**) water levels indicate a decline from June 1998 through October 2002, some recovery through May of 2004, and then another decline from December 2012 through present. The water levels range from 145.97 to 160.14 feet below land surface.

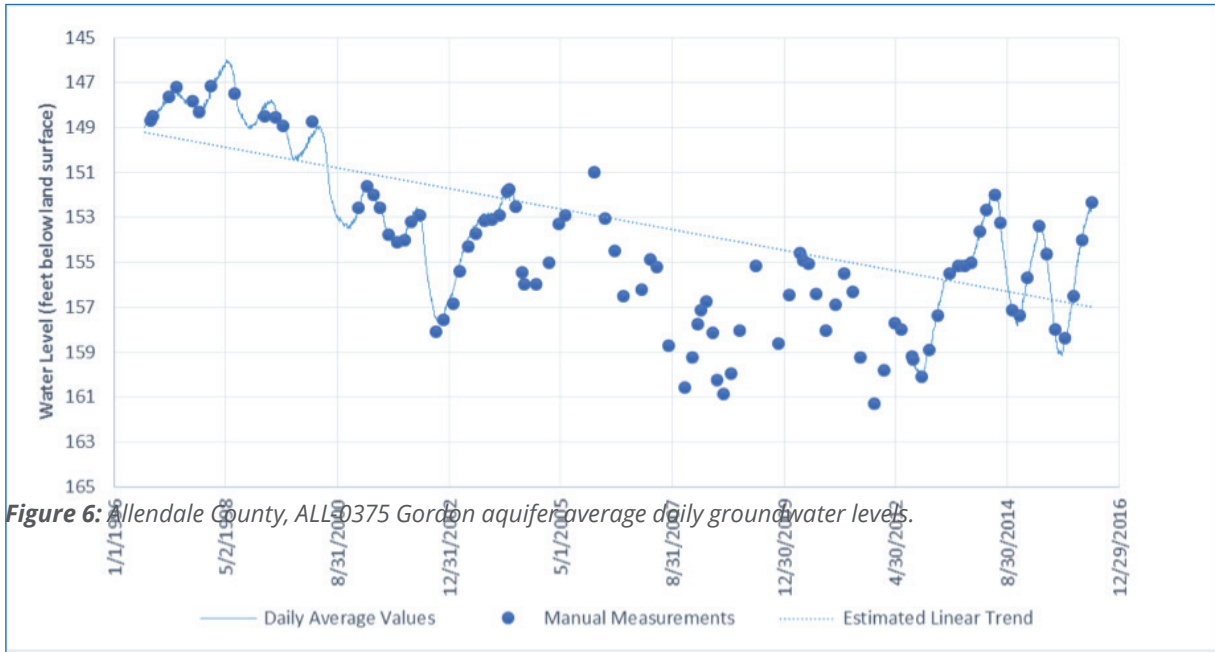


Figure 6: Allendale County, ALL-0375 Gordon aquifer average daily groundwater levels.

Figure 7 shows the most recent potentiometric map produced by DNR of the water level elevations for the Floridan and Gordon aquifers. In general, in the counties of concern, there are no real cones of depression in groundwater elevations in these upper aquifers (Wachob, Hockensmith, Luciano, & Howard, 2014). This is likely due to little use as a resource, its access to recharge, and connectivity with surface water.

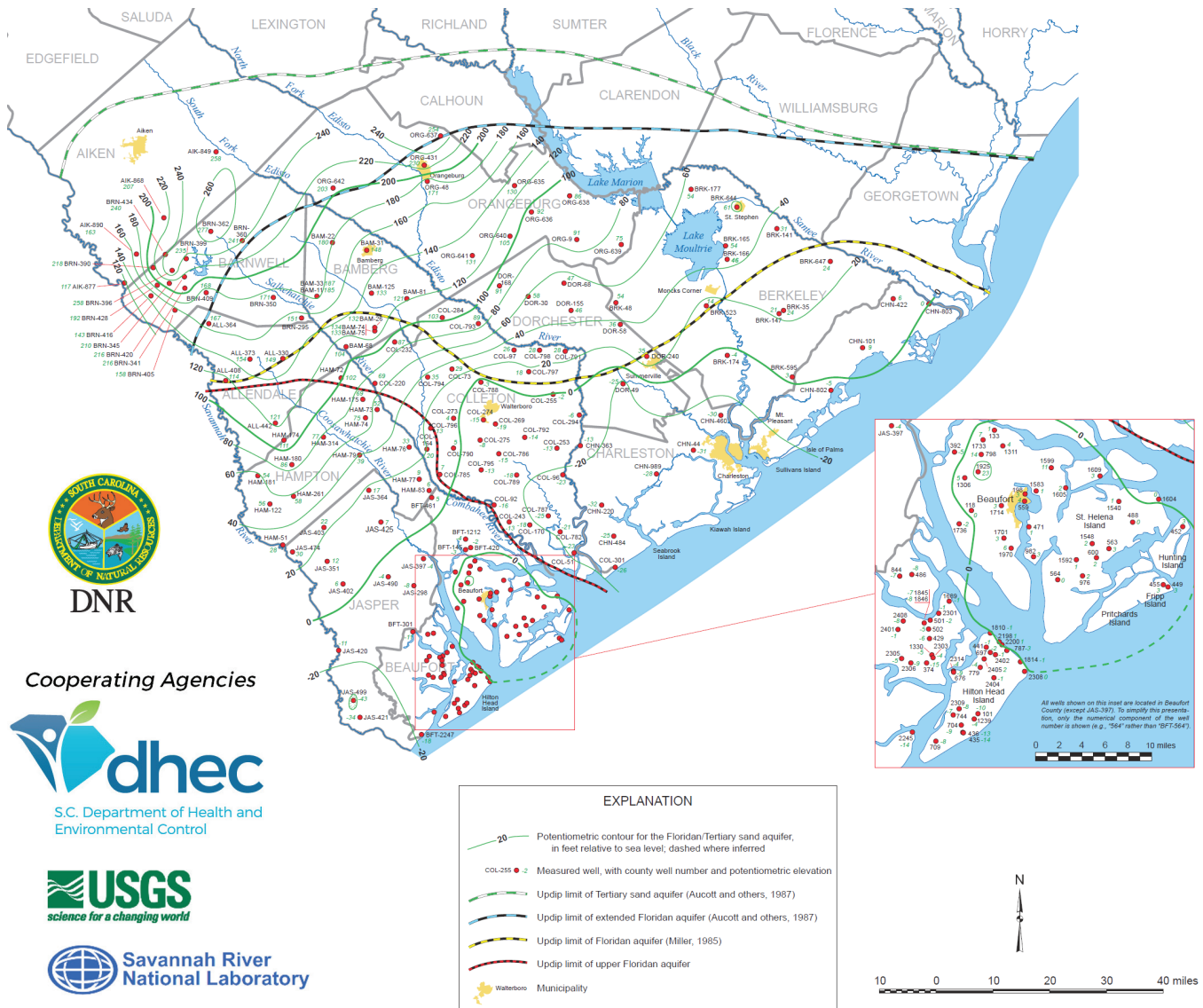


Figure 7: Floridan/Gordon aquifer potentiometric map (Wachob, Hockensmith, Luciano, & Howard, 2014).

Crouch Branch Aquifer

The Crouch Branch aquifer, formerly Black Creek aquifer, is one of the most developed aquifers in the proposed Capacity Use Area (Campbell, et al., 2010). The Crouch Branch forms the uppermost regional Cretaceous aquifer (Aucott, Davis, & Speiran, 1987). It is characterized by fine-grained, sandy clay and calcareous clay beds in the eastern sections and is poorly sorted (Campbell, et al., 2010), but fairly uniform in permeability in the eastern region (Aucott, Davis, & Speiran, 1987). Lateral groundwater flow due to recharge is approximately 1.39 MGD (Campbell, et al., 2010). In 2004, withdrawals in the Aiken area from the Crouch Branch were approximately 1.27 MGD (Campbell, et al., 2010). Based on changes in groundwater elevations between the 2001 (Hockensmith, 2003a) and 2015 (Wachob and Czwartacki, 2016) potentiometric maps for the Black Creek/Crouch Branch Aquifer produced by SCDNR, the following declines in groundwater levels have been estimated: up to 5 feet in Aiken County, up to 5 feet in Allendale County, between 5 and 10 feet in Bamberg County, up to 5 feet in Barnwell County, up to 10 feet in Calhoun County, up to 5 feet in Lexington County and up to approximately 12 feet in Orangeburg County.

AIK-0344 (**Figure 8**) shows the seasonal fluctuations in groundwater levels in the Montmorenci area of Aiken County. While this is not long-term data, it does show the typical drop in groundwater levels during the summer months (a time of increased water use for drinking water, irrigation, etc.) and the recovery of groundwater levels towards the fall months as groundwater use declines.

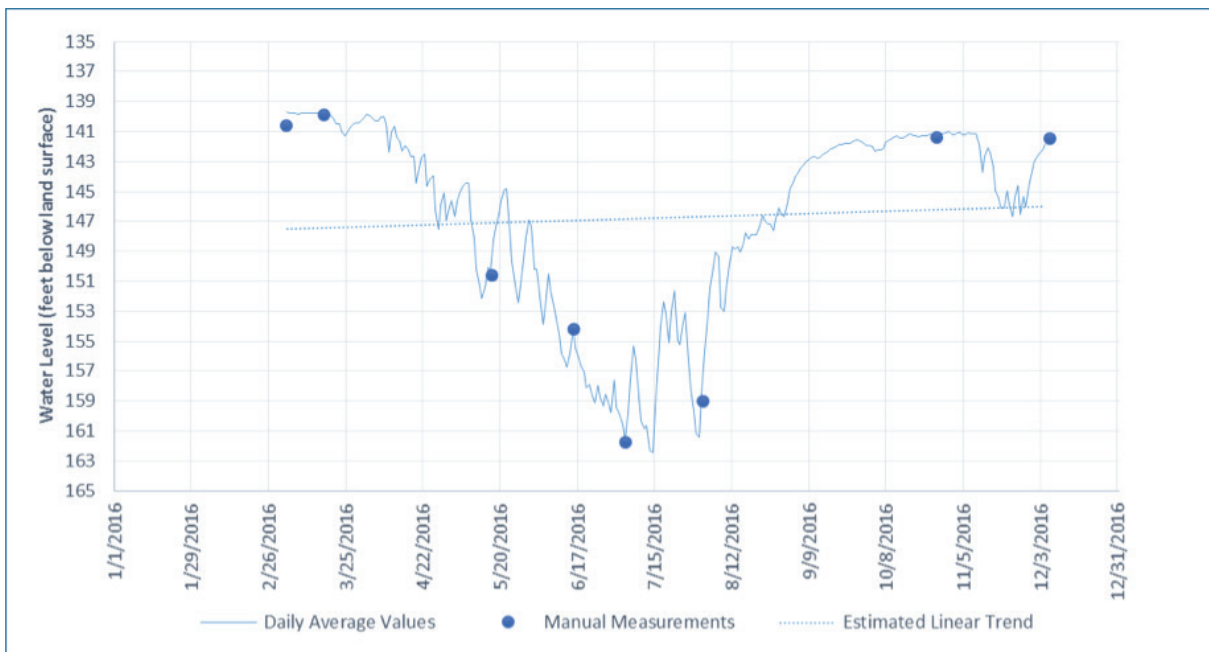


Figure 8: Aiken County, AIK-0344 Crouch Branch aquifer average daily groundwater levels.

AIK-0824 (**Figure 9**) water levels indicate moderate fluctuations from May 1993 through February 1999, whence it begins a steady decline. Note a data gap exists from September 2000 to October 2012, with overall groundwater decline of 5.32 feet (179.94 feet to 185.26 feet). Beginning September 2012 water levels appear to be relatively stable.

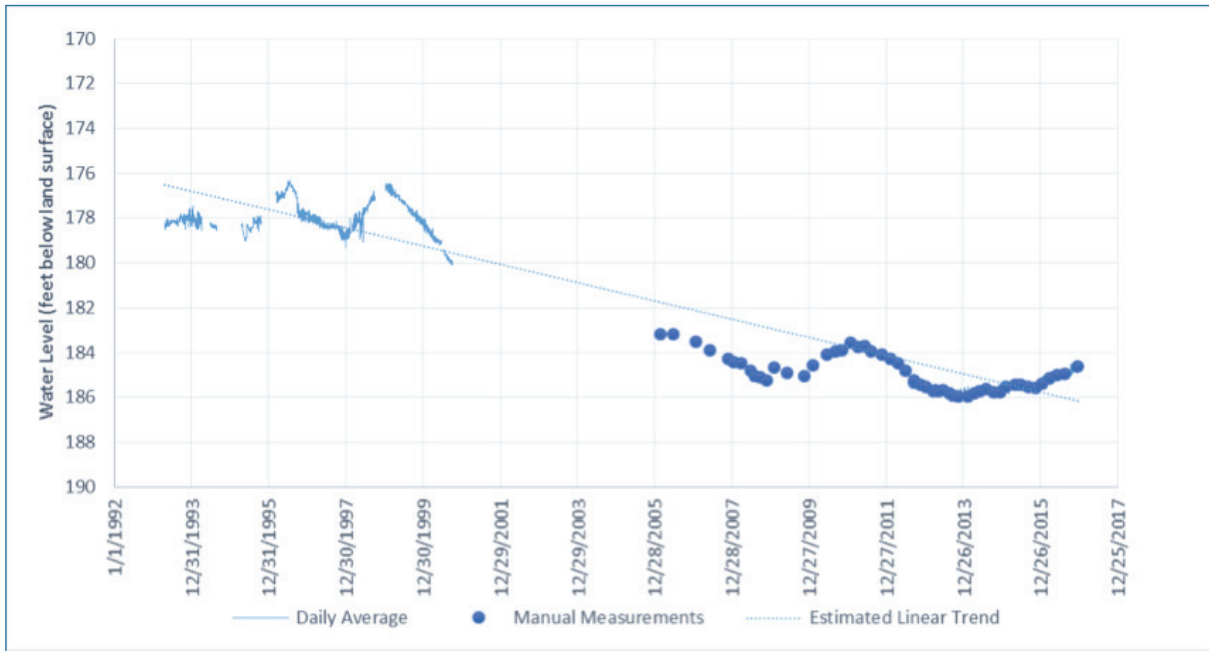


Figure 9: Aiken County, AIK-0824 Crouch Branch aquifer average daily groundwater levels.

AIK-0847 (**Figure 10**), as with AIK-0824, water levels indicate moderate fluctuations with an overall downward trend from May 1993 to September 2000 (23.31 feet to 26.91 feet). Note a data gap exists until January 2013, where the water level was 30.65 feet. The most recent data indicate greater annual variability, with a final measured depth of 28.86 feet in December 2015.

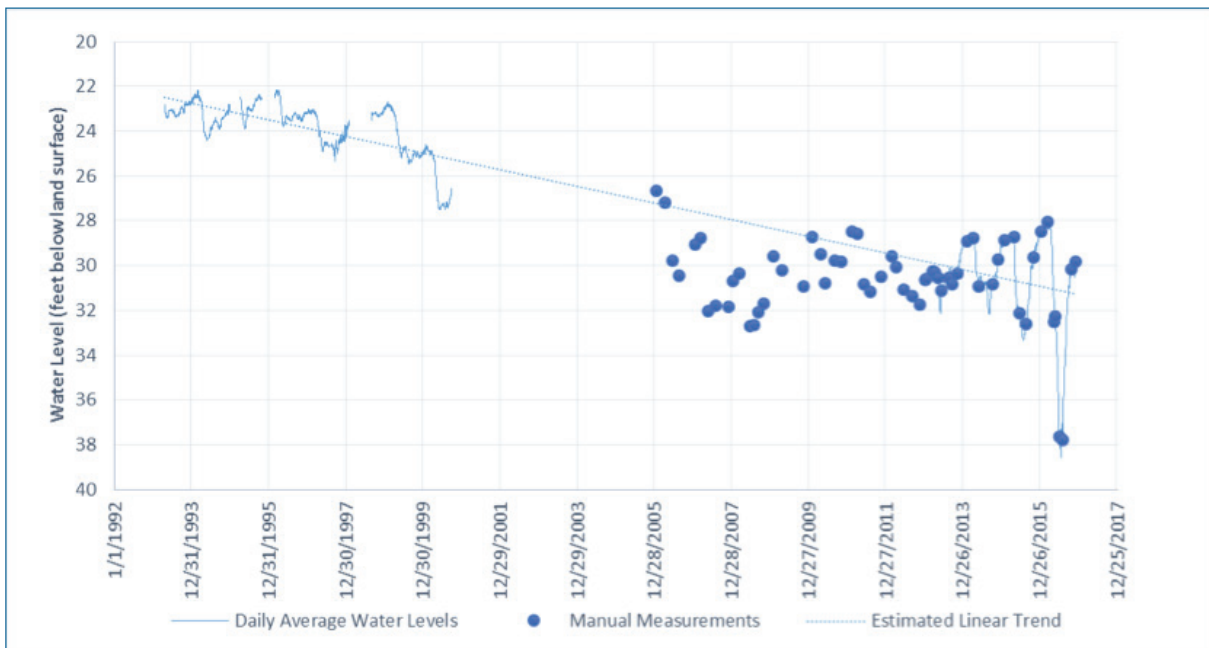


Figure 10: Aiken County, AIK-0847 Crouch Branch aquifer average daily groundwater levels.

AIK-2379 (**Figure 11**) measured water levels indicate a moderate decline through September 1997 with recovery reaching maximum in April 1998. Subsequently the measured water level has declined, with a minimum measured water level in August 2015 at 62.26 feet below land surface. This is a difference of approximately 4.4 feet from the minimum water level measured prior the noted data gap (57.91 in July 2001).

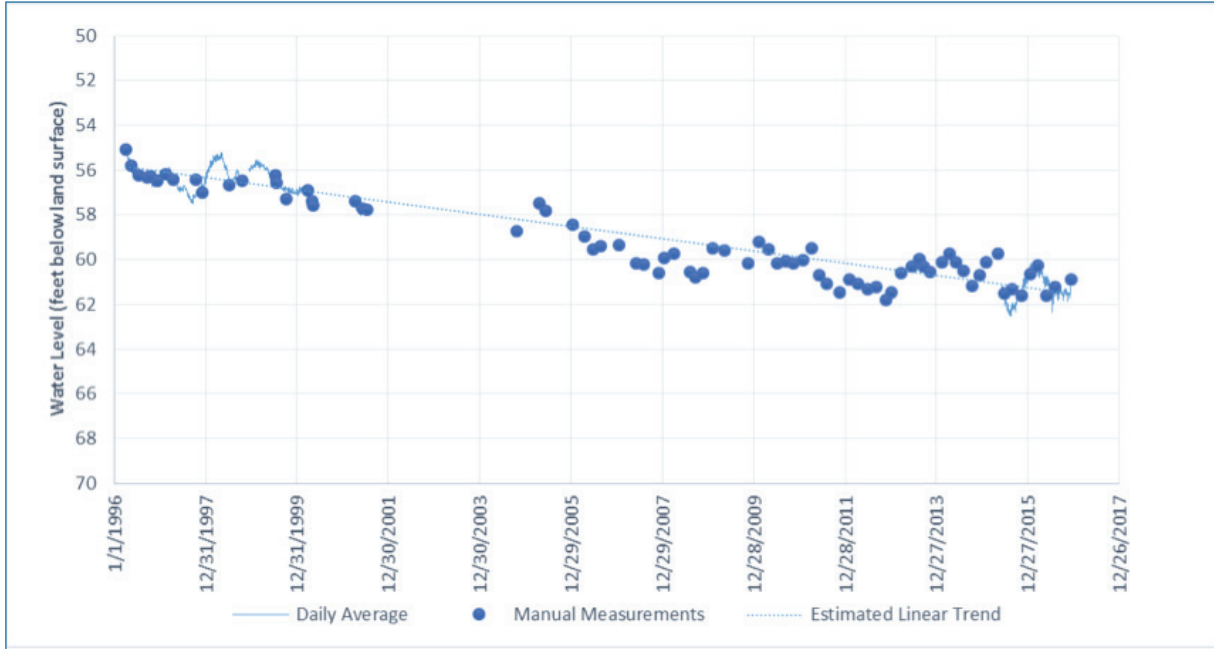


Figure 11: Aiken County, AIK-2379 Crouch Branch aquifer average daily groundwater levels.

ALL-0367 (**Figure 12**) has measured water levels which appear to mimic the response measured in ALL-0375. Data indicate a decline from April 1999 (82.69 feet) to May 2002 (91.21 feet). The overall trend stabilizes after 2002, but seasonal fluctuations are more exaggerated (up to 5.57 foot difference between April 2014 and October 2014).



Figure 12: Allendale County, ALL-0367 Crouch Branch aquifer average daily groundwater levels.

ORG-0393 (**Figure 13**) measured water levels decline over time. Seasonal fluctuations become more magnified over time with a measured range of 5.2 feet in 2001 to a measured range of over 30 feet in 2015.



Figure 13: Orangeburg County, ORG-0393 Crouch Branch aquifer average daily groundwater levels.

Figure 14 shows the most recent potentiometric map produced by DNR, showing the groundwater elevations in late 2015 in DNR monitoring wells for the Crouch Branch aquifer (Wachob & Czwartacki, 2016). There is one major cone of depression (sustained declines in groundwater levels centered on areas of pumping) in Georgetown County but none identified in the Western Region of the state.

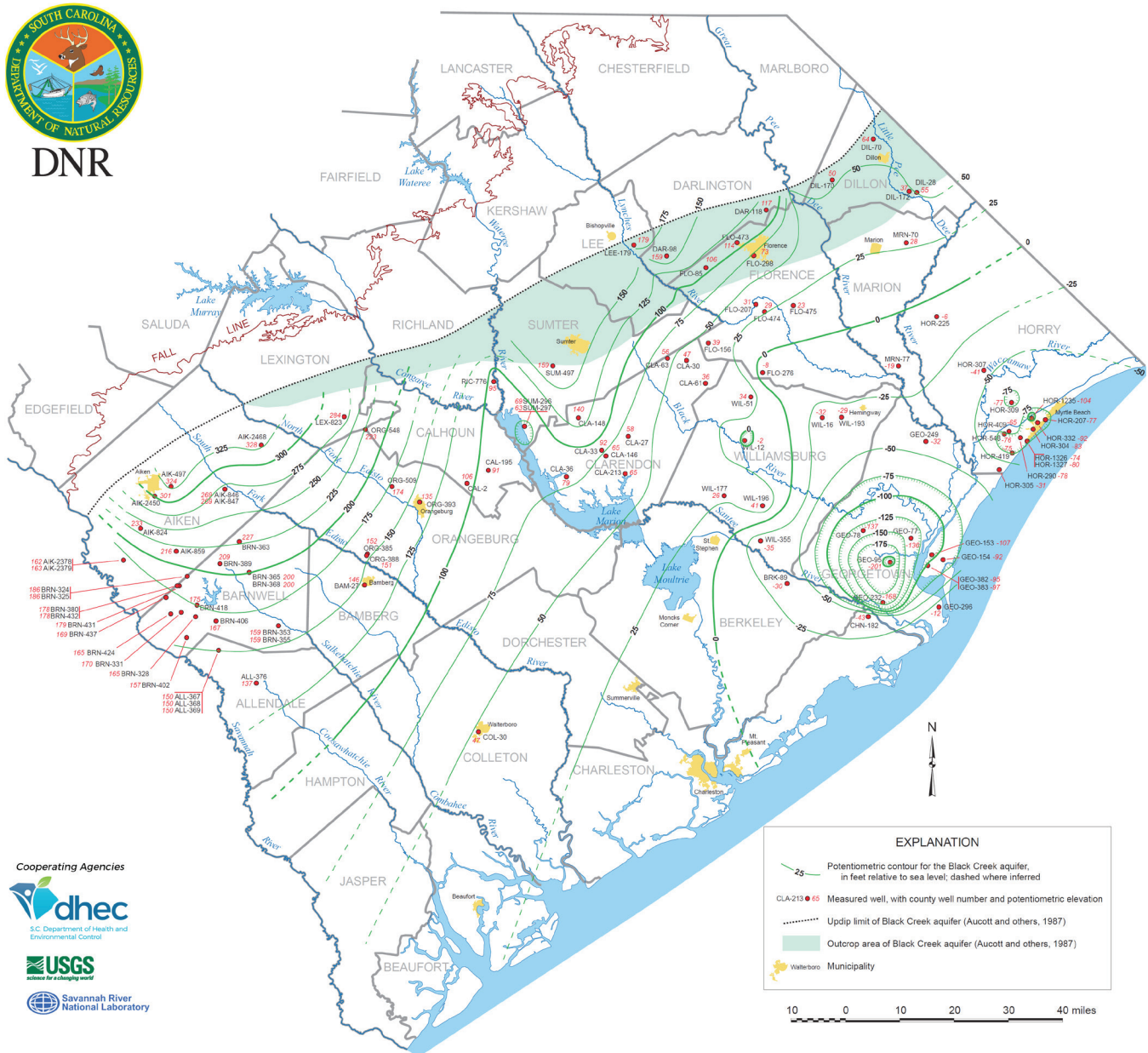


Figure 14: Black Creek/Crouch Branch aquifer potentiometric map (Wachob & Czwartacki, 2016).

McQueen Branch Aquifer

The McQueen Branch aquifer, formerly the Middendorf, along with the Crouch Branch aquifer, is the most developed aquifer in the Western Region of the state (Campbell, et al., 2010). It is characterized as unconsolidated, poorly sorted fine to coarse grained sand, and clayey sand, with some local gravel, which provides relatively constant hydraulic conductivity in the upper coastal plain area (Aucott W. R., 1988). In down-dip areas, it is confined from the top by the McQueen Branch confining unit, made up of clay beds (Campbell, et al., 2010). The confining unit is not as prevalent in the up-dip sections close to the fall line, causing the McQueen Branch and Crouch Branch aquifers to be combined in this region. Due to the coarse grained lithology, the McQueen Branch aquifer has produced wells with yields upwards of 1,500 gallons per minute, with reported withdrawals in the Aiken area of 5.41 MGD. Due to its productivity and relatively shallow nature, the McQueen Branch is an important water resource for this region, and is therefore important to preserve the integrity of the water resources within it. Based on changes in groundwater elevations between the 2001 (Hockensmith, 2003b) and 2014 (Wachob, 2015) potentiometric maps for the Middendorf/McQueen Branch aquifer produced by SCDNR, the following declines in groundwater levels have been estimated: up to 5 feet in Aiken County, up to 12 feet in Allendale County, up to 15 feet in Bamberg County, up to 10 feet in Barnwell County, up to 15 feet in Calhoun County, up to 10 feet in Lexington County and up to 15 feet in Orangeburg County.

AIK-0817 (**Figure 15**) measurements from May 1988 to April 1991 indicate a slight decline from 181.46 feet to 183.84 feet. In May 1993 water levels had recovered to original levels with subsequent measurements indicating slight temporal fluctuations and a steady measured decline until May 2000 (note data gap), whence water levels appear fairly constant, with temporal fluctuations measured.

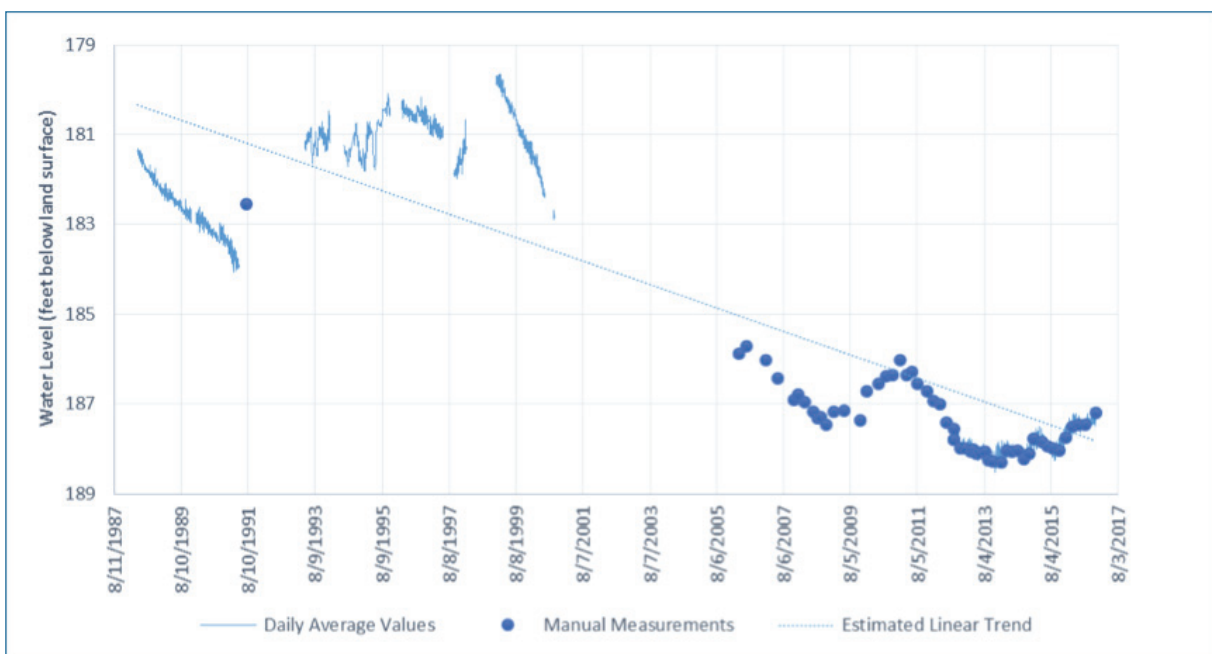


Figure 15: Aiken County, AIK- 0817 McQueen Branch aquifer average daily groundwater levels.

AIK-0826 (**Figure 16**) indicates an overall decline in measured water level from original data generated in October 1989 from 22.66 feet to 33.29 feet in July 2016.

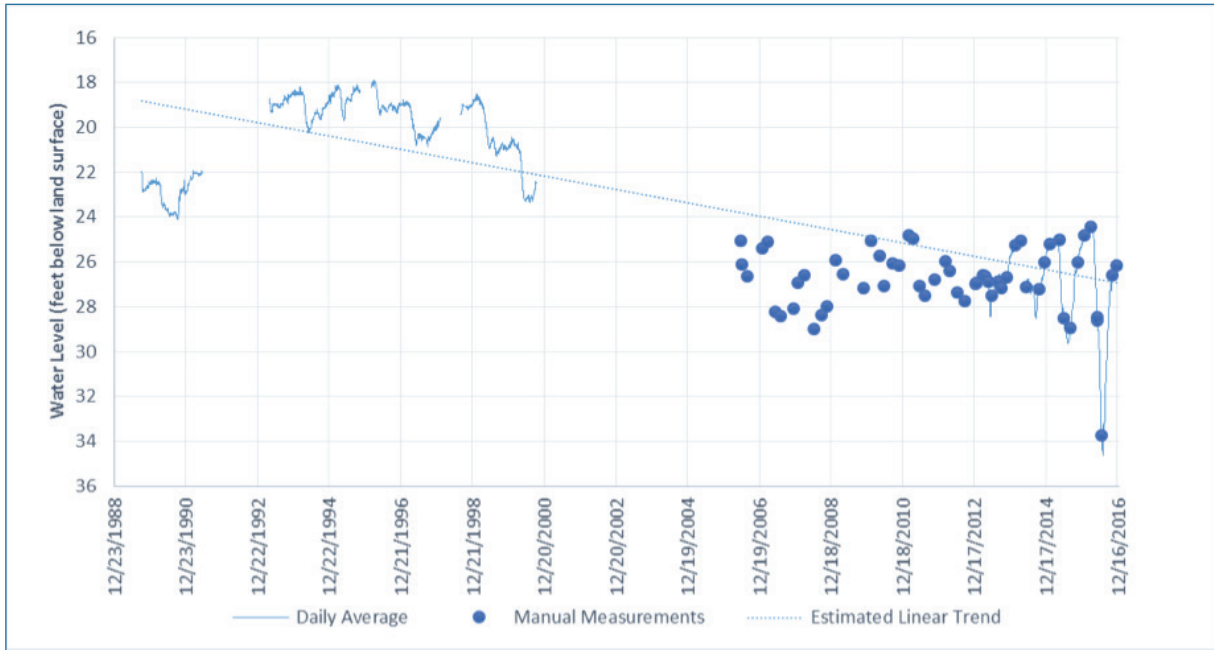


Figure 16: Aiken County, AIK-0826 McQueen Branch aquifer average daily groundwater levels.

LEX-0844 (**Figure 17**) indicates an overall decline in measured water level from original data generated in November 1999 from 69.12 feet to 75.61 feet in January 2003. Measured water levels appear relatively stable from January 2003 through April 2012, with a slight decline until August 2015. The most recent data indicates a gradual recovery in this well.

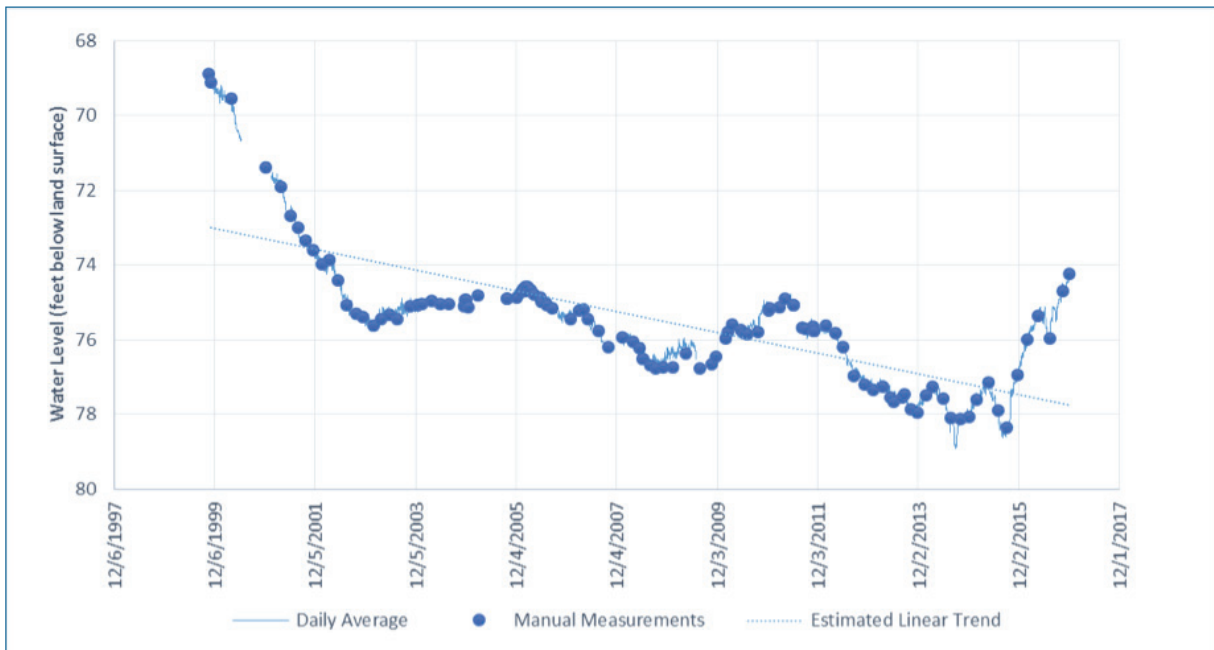


Figure 17: Lexington County, LEX-0844 McQueen Branch aquifer average daily groundwater levels.

Figure 18 shows a potentiometric map constructed by SCDNR in late 2014 for the McQueen Branch aquifer (Wachob, 2015) and is a representation of the regional groundwater elevations in the McQueen Branch aquifer. In the eastern part of the state and near the coast, cones of depression (sustained declines in groundwater levels centered around areas of pumping) have developed, but no major cones of depression have been identified in the Western Region of the state. However, across Aiken, Allendale, and Barnwell Counties, groundwater elevation declines have been noted between 3 and 10 feet since the mid-1990s, with little to no recovery after drought conditions in southern Lexington County (Harder, Gellici, & Wachob, 2012).

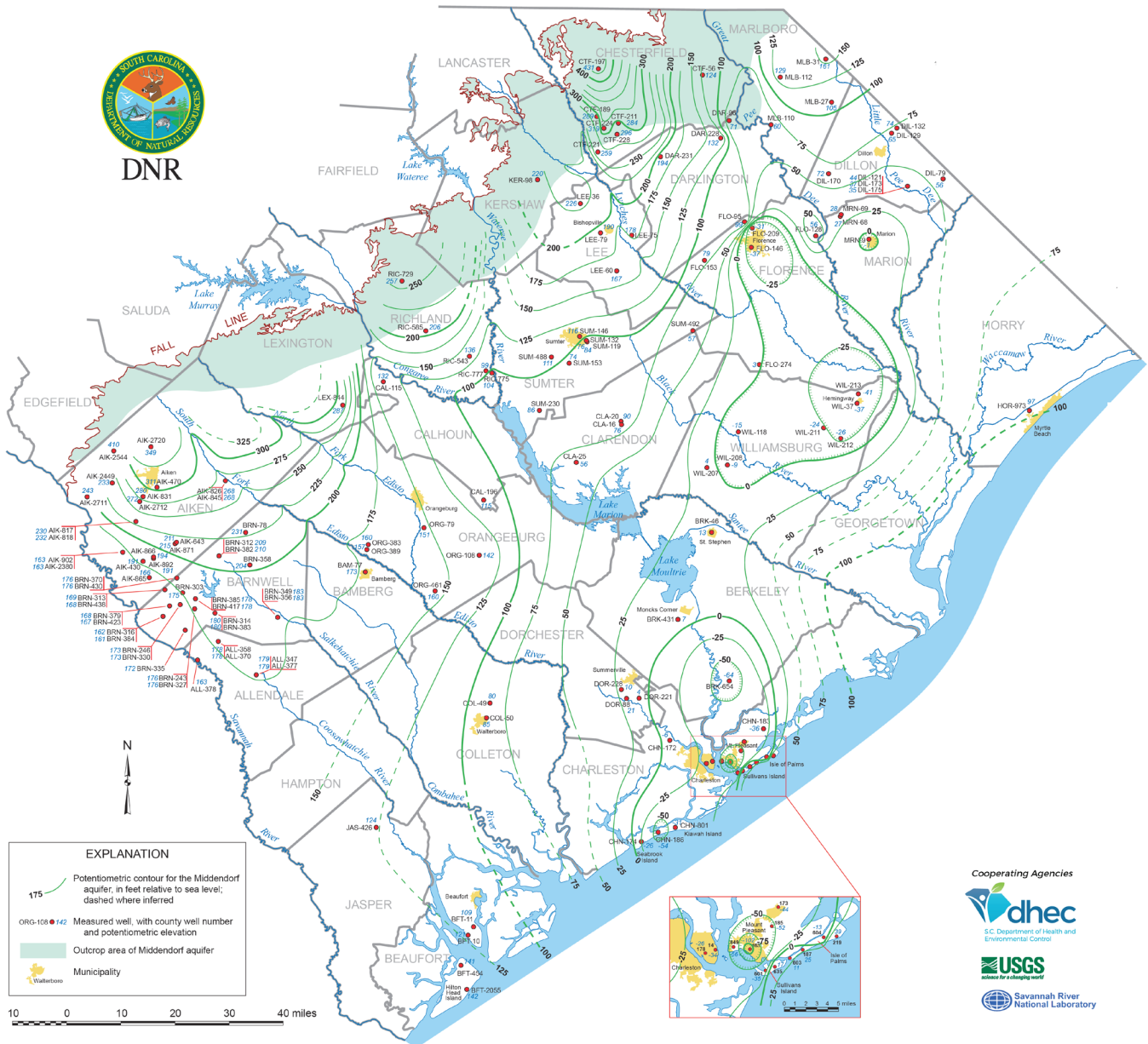


Figure 18: Middendorf/McQueen Branch potentiometric map (Wachob, 2015).

Population and Water Use Increases

Currently Aiken County utilizes groundwater wells as the main source for drinking water supplies, but due to increasing concerns over the viability of the aquifers over time, some utilities have begun developing surface water as a supplement to the groundwater source. The population of Aiken County in 2010 was 160,099 and is expected to increase to approximately 182,500 by 2030, a 14% increase. The reported groundwater use for public water supply increased from 947.14 million gallons a year (MGY) in 1983 to 5,177.56 MGY in 2015. Lexington County is projected to increase in population by 27% between 2010 and 2030 (262,391 to 333,200). The increasing demand on water utilities to serve the expanding population will create increasing pressure on the groundwater resource in some areas of the county. Measured groundwater levels in monitor wells maintained by SCDNR have typically declined in most of the aquifers that are developed in this region of the state. Reported groundwater use by county is shown in Figure 19.

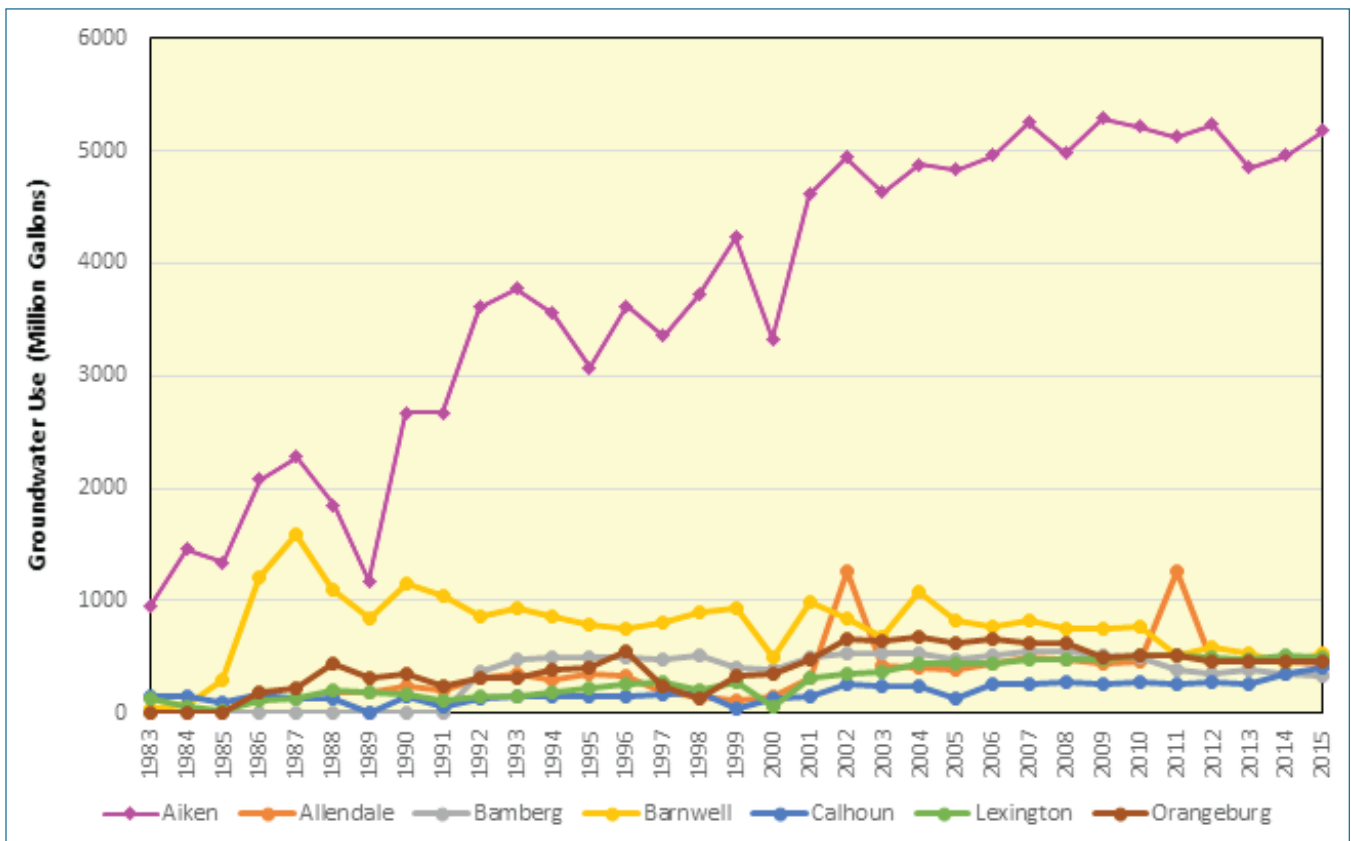


Figure 19: Reported public water supply use (groundwater) in the designated Western Region counties.

Although the population of Allendale, Bamberg, and Barnwell Counties are projected to decrease in the near future, it is anticipated that development of the aquifer systems will increase as agricultural use, as has been the case in Aiken, Calhoun, Lexington and Orangeburg Counties, which have seen upward trends in reported water use since 2009 (Figures 20 and 21).

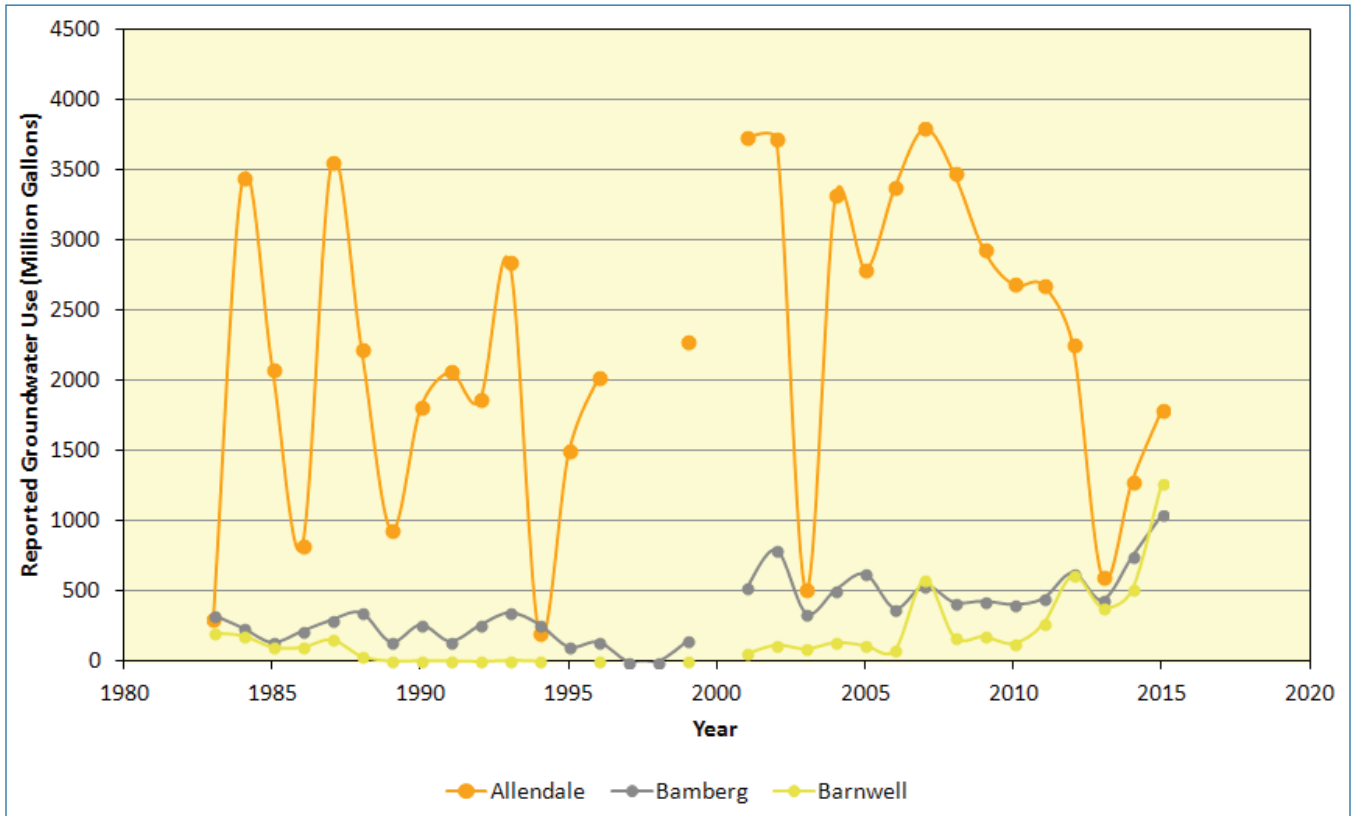


Figure 20: Reported agricultural groundwater use in Allendale, Bamberg, and Barnwell Counties.

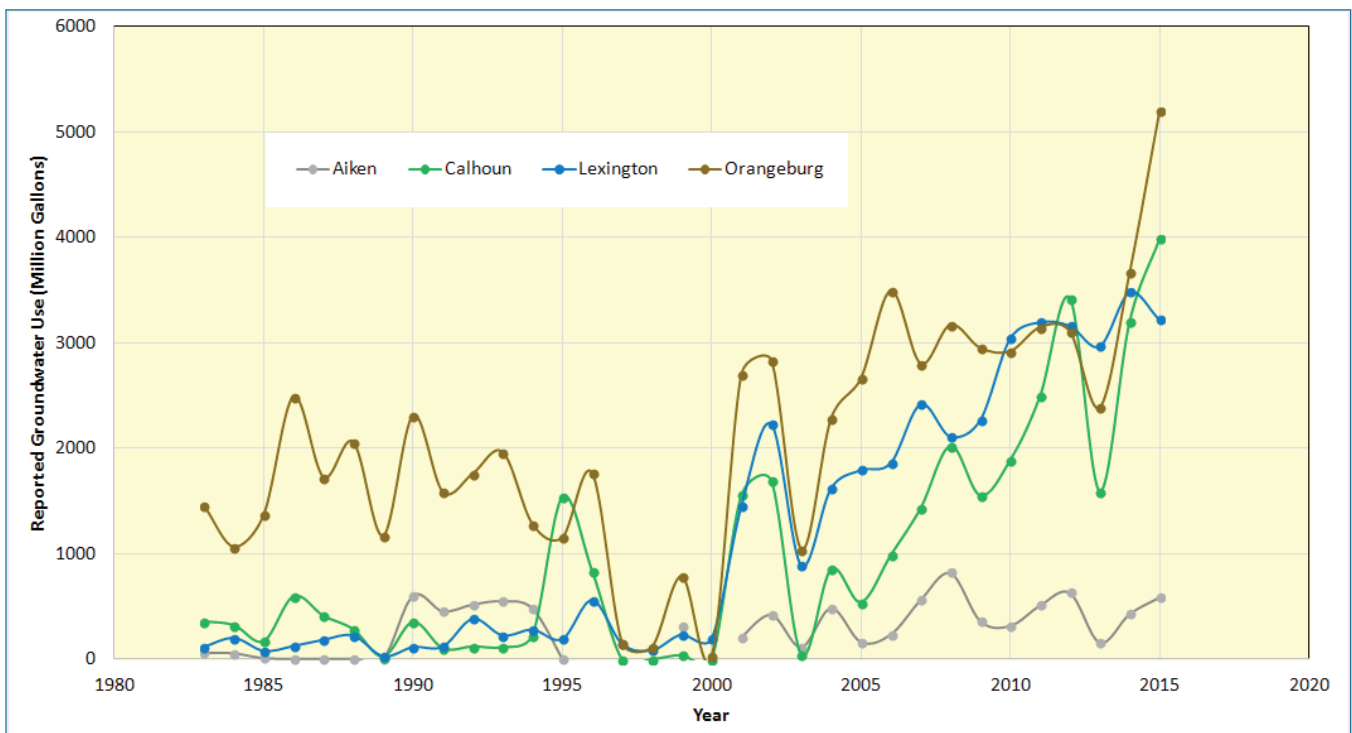


Figure 21: Reported agricultural groundwater use in Aiken, Calhoun, and Orangeburg Counties.

Conclusions and Recommendations

The aquifers in large portions of the Western Region of South Carolina are hydrologically interconnected, indicating groundwater users within the proposed Western Capacity Use Area are utilizing the same resource. Reported groundwater withdrawals in the region have steadily increased and groundwater level declines have been observed in monitoring wells across the counties of concern. Demands on the groundwater resource will continue to increase with a growing population. As the development of the groundwater resource continues, further water level declines will be expected and the potential for adverse impacts to current and future groundwater users will become more frequent and serious over time.

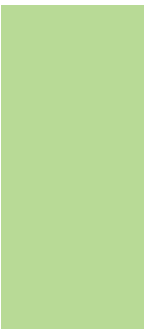
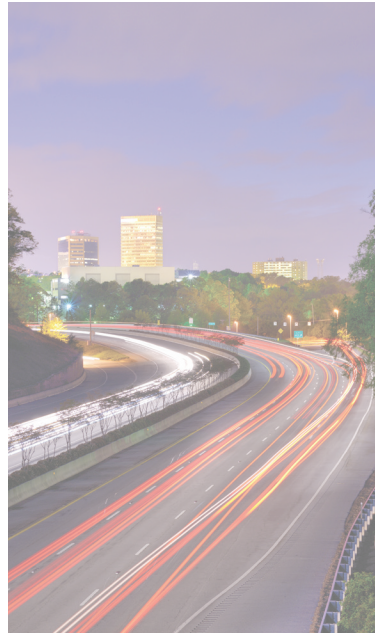
As the proposed counties share the same resource in conjunction with portions of the Low Country Capacity Use Area and the Trident Capacity Use Area, it is appropriate to incorporate the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg as the Western Capacity Use Area. If designated, the Western Capacity Use Area, in conjunction with the previously designated areas of the Low Country, Pee Dee, and Trident will place three quarters of the coastal plain counties under one reasonable and consistent regulatory program, thereby providing greater measures to prevent, mitigate, and abate potential unreasonable effects on the resource and those entities relying on that resource. Further, if designated, inclusion of the Western Capacity Use Area will, in part, address previous water management studies and reports produced by SCDNR requesting that the entire coastal plain become a Capacity Use Area (Badr, Wachob, and Gellici, 2004).

Based on the preliminary data available to the Department, which have been summarized in this report, Aiken County along with Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg counties have developed and utilized groundwater to the degree that coordination and regulation of groundwater supplies may be needed pursuant to the Groundwater Use and Reporting Act, Section 49-5-60. As such, this preliminary data is provided to facilitate the gathering of public input and any additional data or information that will help inform the potential designation of these counties as the Western Capacity Use Area.

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Meetings

Western Capacity Use Area Designation

July 18th, 2017 – Barnwell County

August 23rd, 2017 – Orangeburg County

October 12th, 2017 – Bamberg County

October 19th, 2017 – Allendale County

January 9th, 2018 – Calhoun County

January 16th, 2018 – Lexington County

February 8th, 2018 – Clemson Extension, Calhoun County Presentation

February 8th, 2018 – Aiken County

April 9th, 2018 – Columbia Meeting, People's Auditorium



South Carolina Department of Health and Environmental Control

Proposed Western Capacity Use Designation

Bureau of Water



- Capacity Use Program Background
- Proposed Western Designation Timeline
- Hydrogeological Setting
- Reported Water Use
- Water Level Trends
- Potential Impacts and Management Strategies
- Summary



South Carolina Department of Health and Environmental Control

Capacity Use Background



Water Quantity Programs

- **Groundwater Use and Reporting**
 - Since the 1970s
 - Issue permits in designated capacity areas of the coastal plain over for use over **3 million gallons in any month** (~1in of water per week for 28 acres or average use for 1000 people)
 - Users outside of Capacity Use Areas must register wells if well or well system will use over 3 million gallons in any month
 - All registered and permitted groundwater withdrawers report their annual water use to the Department
- **Surface Water Withdrawal, Permitting and Reporting**
 - Since June 2012
 - Issue permits / registrations statewide if over 3 million gallons in any month
 - All registered and permitted surface water withdrawers report their annual water use to the Department



South Carolina Department of Health and Environmental Control

Groundwater Use and Reporting Act Legislative Declaration of Policy

“The General Assembly declares that the general welfare and public interest require that the groundwater resources of the State **be put to beneficial use to the fullest extent to which they are capable**, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources.”



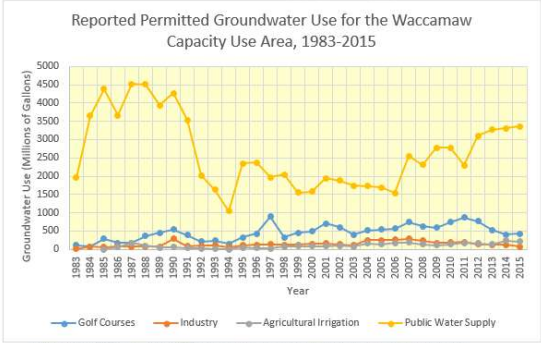
Groundwater Use and Reporting Act Capacity Use Area Designation

Where groundwater withdrawal :

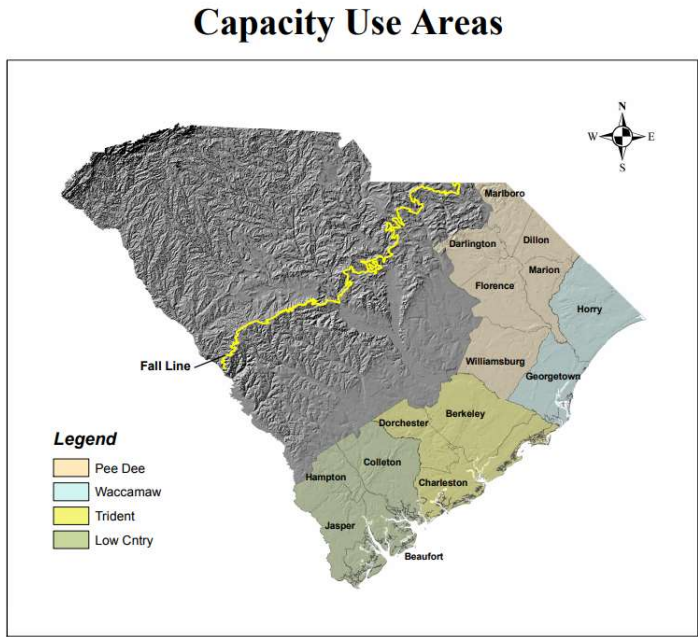
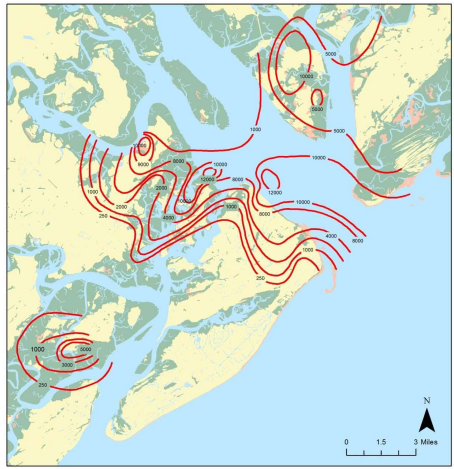
- Presents potential adverse effects to the natural resources
- Poses a threat to public health, safety, or economic welfare
- Poses a significant threat to the long term integrity of the groundwater source

The Department, local government or groundwater withdrawers may initiate a Capacity Use Area designation process

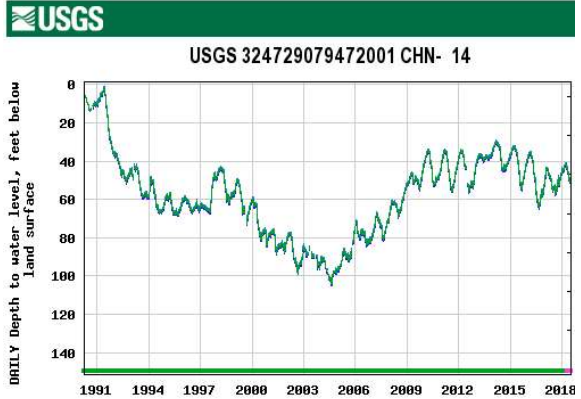
- **Waccamaw - June 22, 1979**
 - Georgetown & Horry Counties



- **Lowcountry - July 24, 1981**
 - Beaufort, Colleton, Jasper
 - Hampton (added in 2008)



- **Trident - August 8, 2002**
 - Berkeley, Charleston, Dorchester



- **Pee Dee - February 12, 2004**
 - Darlington, Dillon, Florence, Marlboro, Marion, Williamsburg





South Carolina Department of Health and Environmental Control

Proposed Western Capacity Use Area Timeline

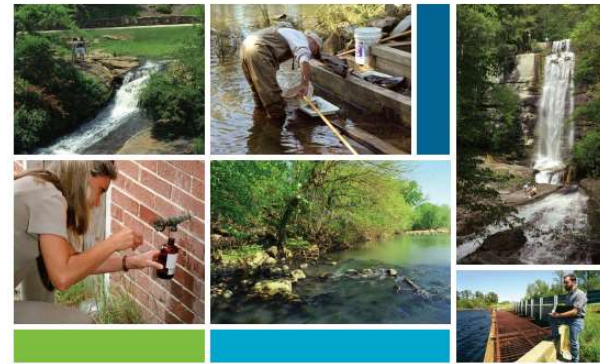


Proposed Western Capacity Use Area Timeline

2004 State Water Plan- Recommended entire coastal plain be designated Capacity Use Area

July 19, 2016 - Aiken County Council requested that DHEC make portions of Aiken County a Capacity Use Area

May 2017- DHEC in consultation with DNR releases a Preliminary Assessment of the Groundwater Conditions in a seven county area



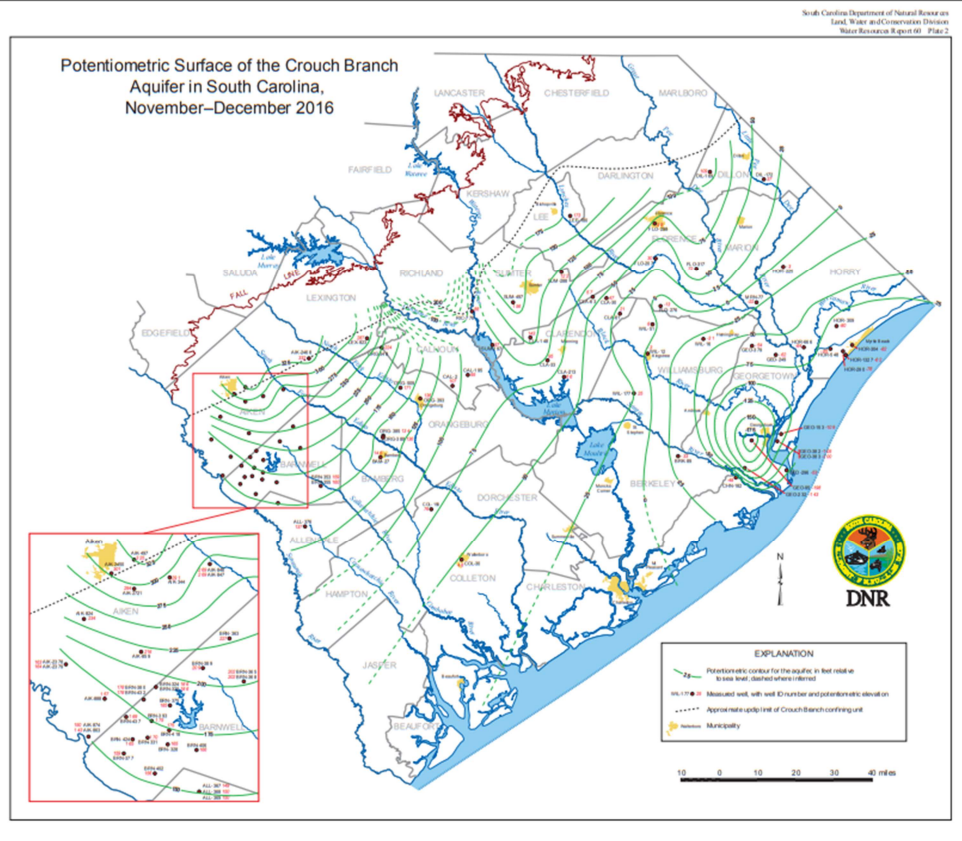
A Preliminary Assessment of the Groundwater Conditions

in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina



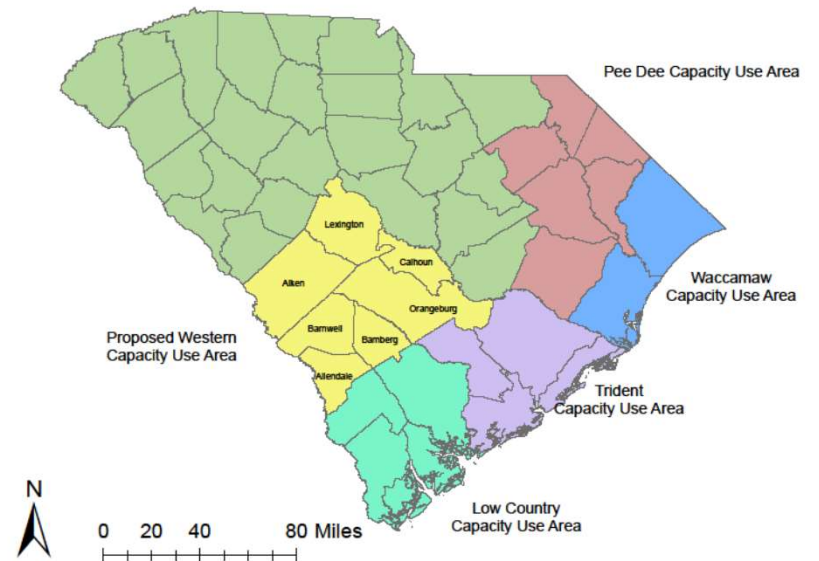
MAY 2017

Groundwater Evaluation



Groundwater System
 Bounded to the east by the Savannah River
 Bounded to the west by the Congaree / Santee River
 Bounded to the North by the Fall Line
 Southern Boundary Existing Capacity Use Areas

South Carolina Proposed Western Capacity Use Area





Fall 2017 to Spring 2018- Series of Stakeholder Meetings;

July 18th, 2017 – Barnwell County

August 23rd, 2017 – Orangeburg County

October 12th, 2017 – Bamberg County

October 19th, 2017 – Allendale County

January 9th, 2018 – Calhoun County

January 16th, 2018 – Lexington County

February 8th, 2018 – Clemson Extension, Calhoun County

February 8th, 2018 – Aiken County

April 9th, 2018 – Columbia Meeting, People's Auditorium



Comments Received

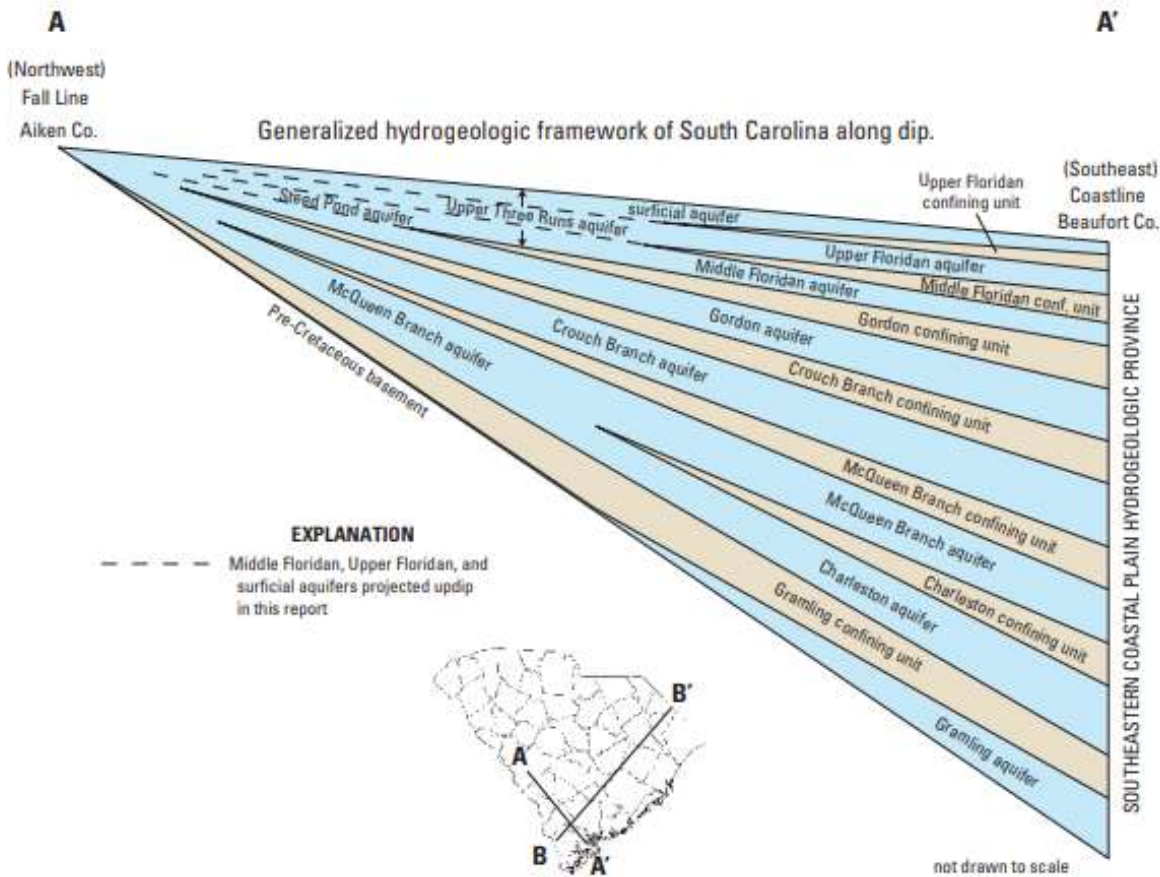
- Over 70 Written Comments have been received
- Majority of comments are in support of designation
- Support for designation has been submitted by Aiken County Council and the City of Aiken
- All Comments received are included in the Board Package

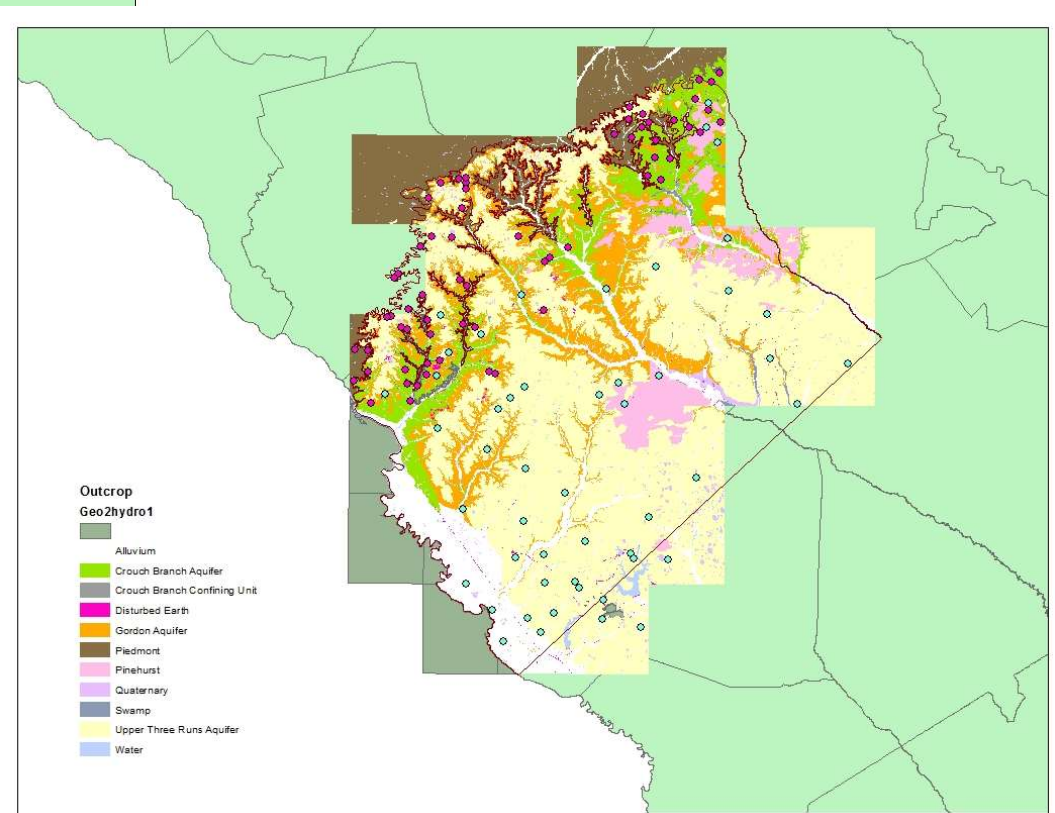
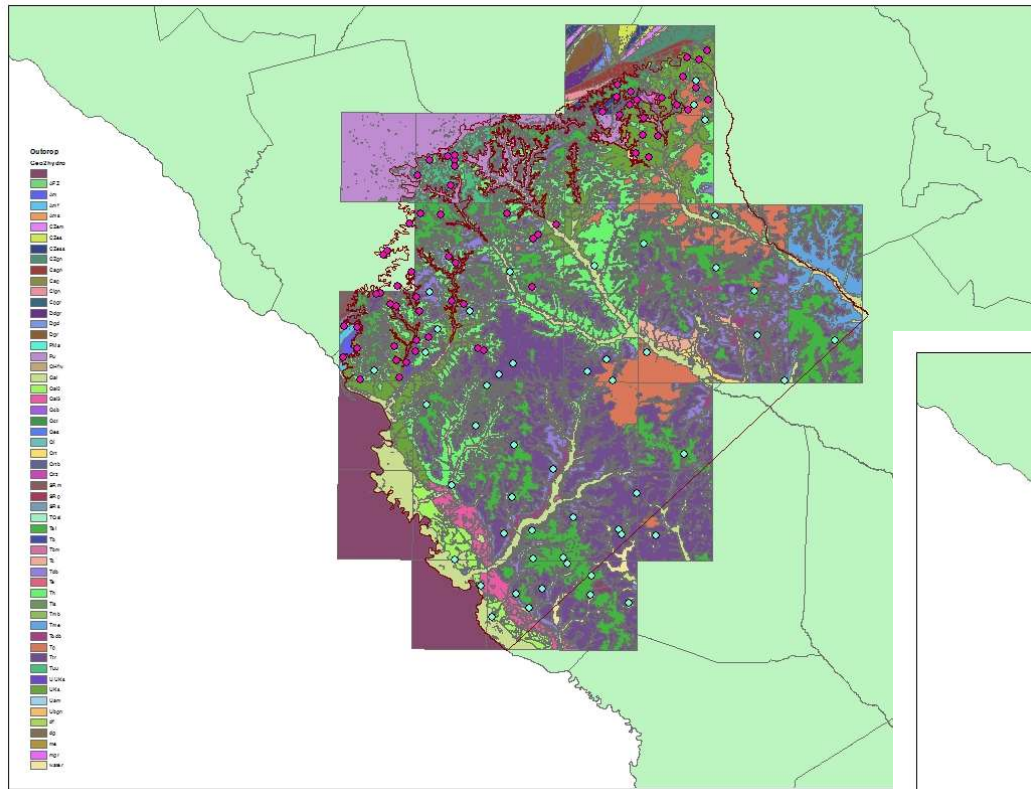


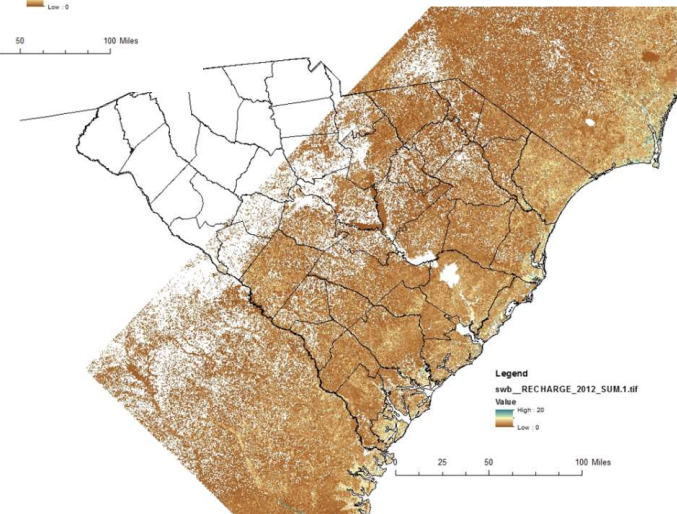
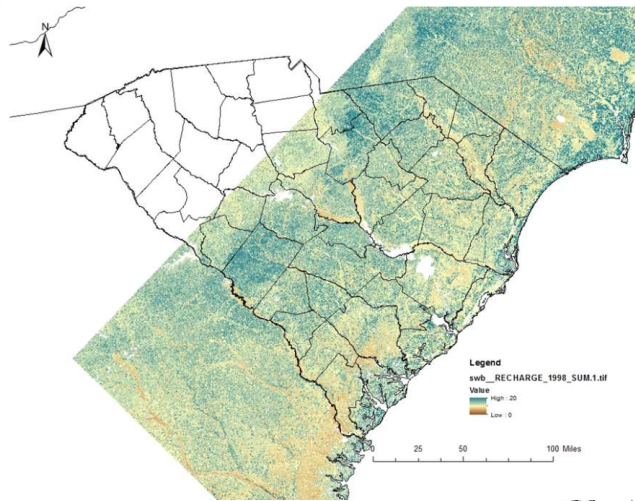
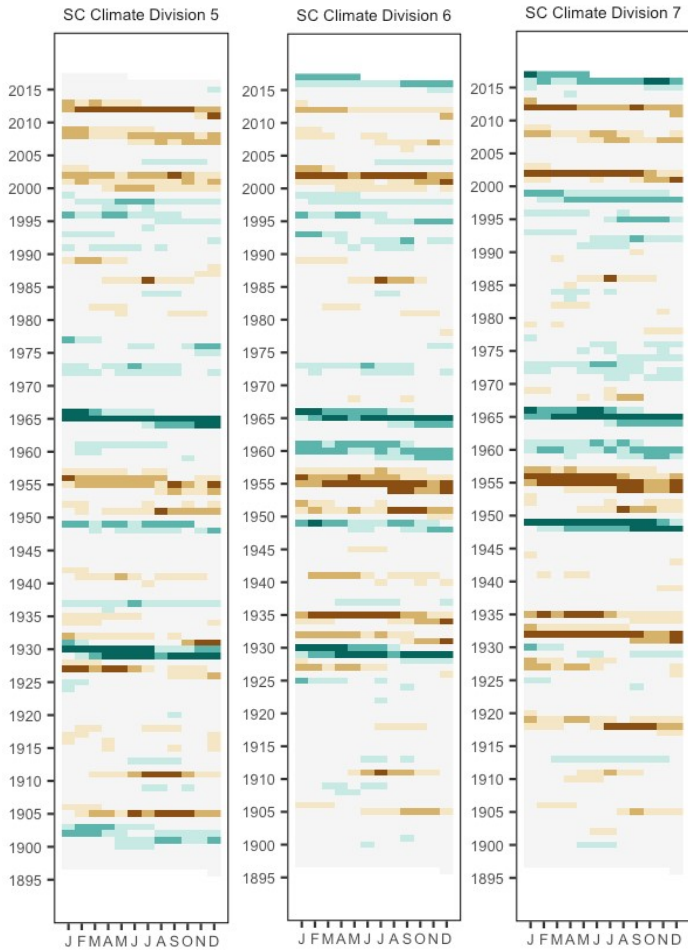
South Carolina Department of Health and Environmental Control

Hydrogeological Setting

Groundwater in the Coastal Plain of SC





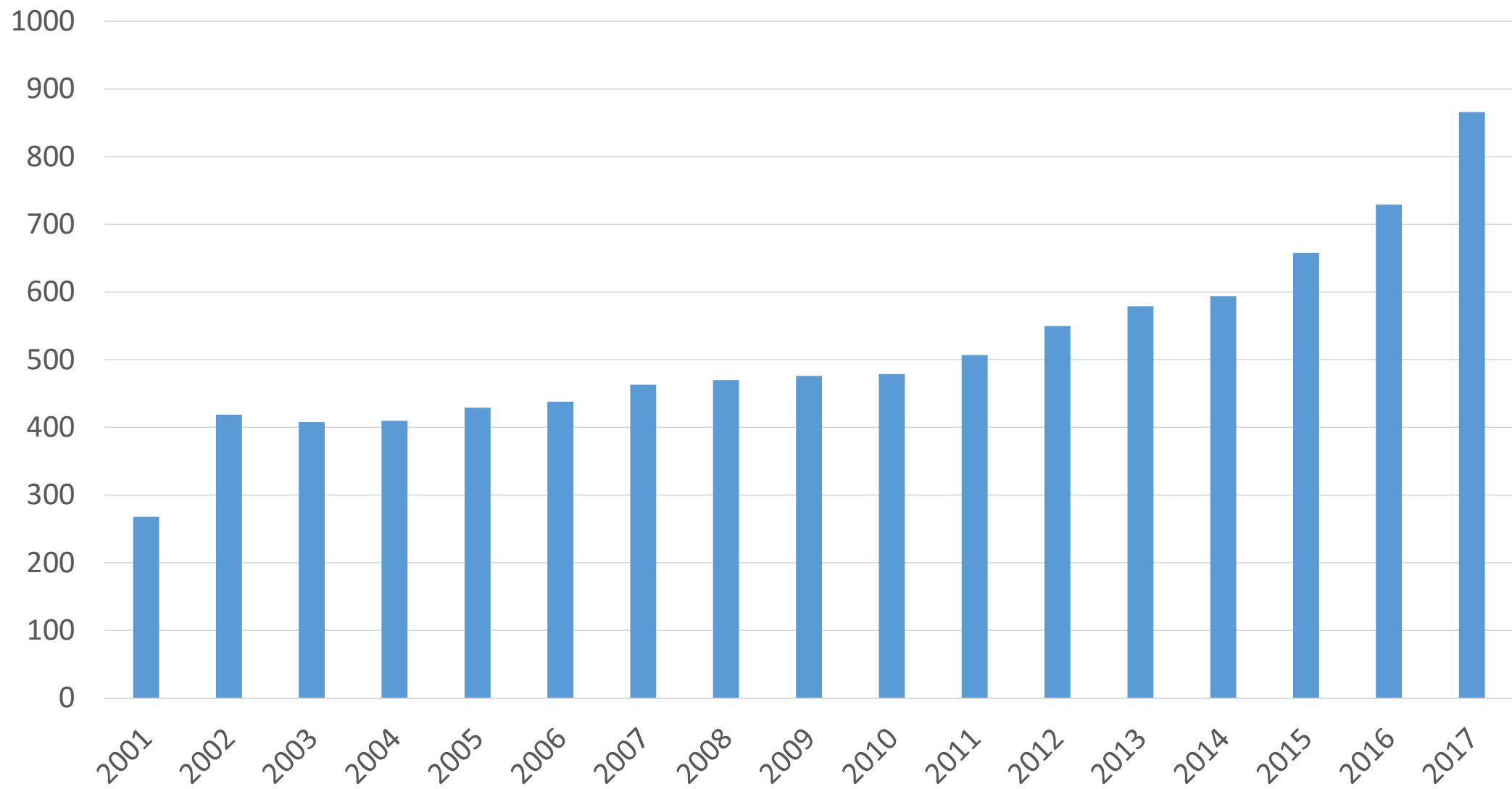




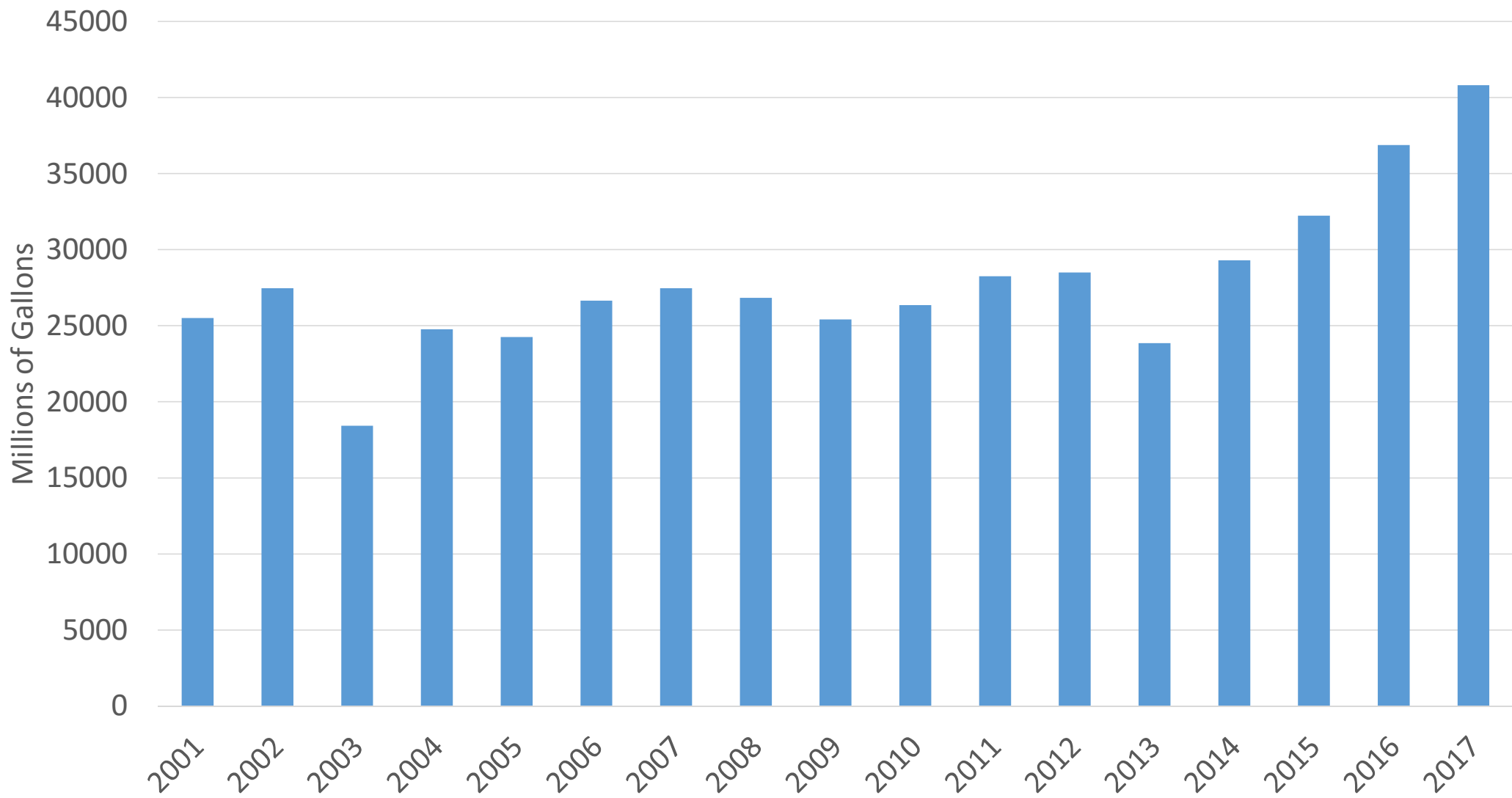
South Carolina Department of Health and Environmental Control

Groundwater Use in Proposed Western Capacity Use Area

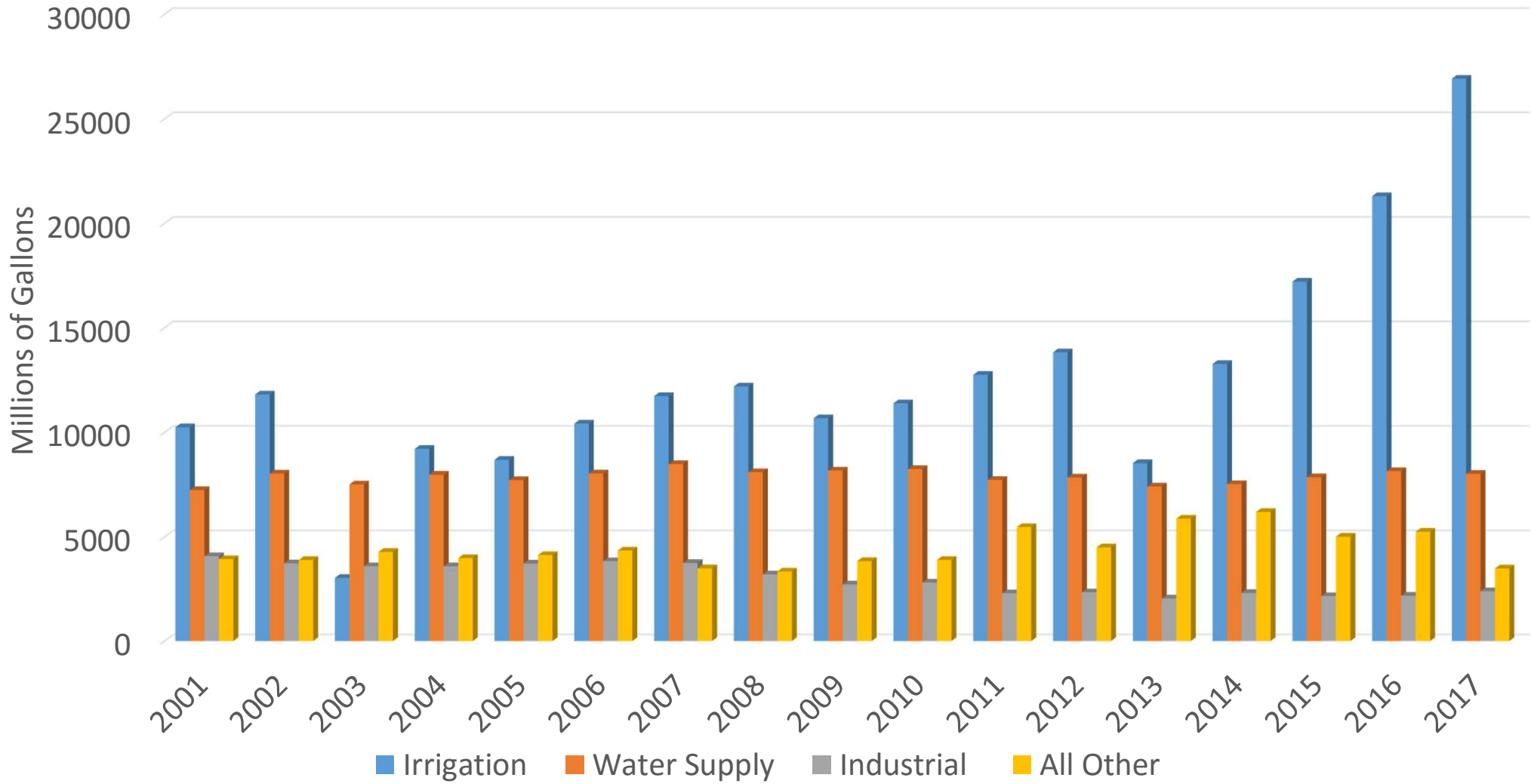
Number of Registered Wells in Proposed Western Capacity Use Area



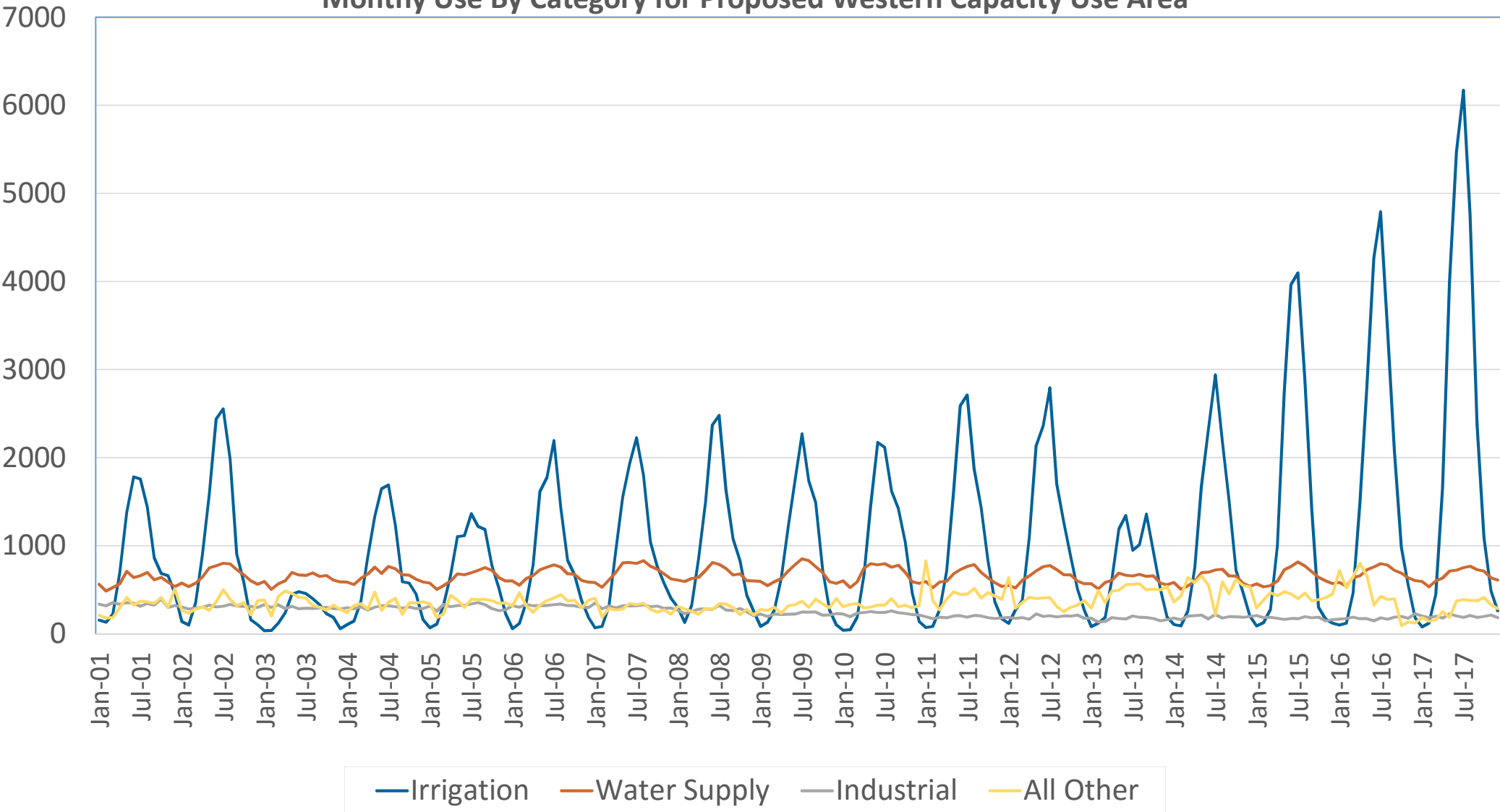
Reported Groundwater Use in Proposed Western Capacity Use Area

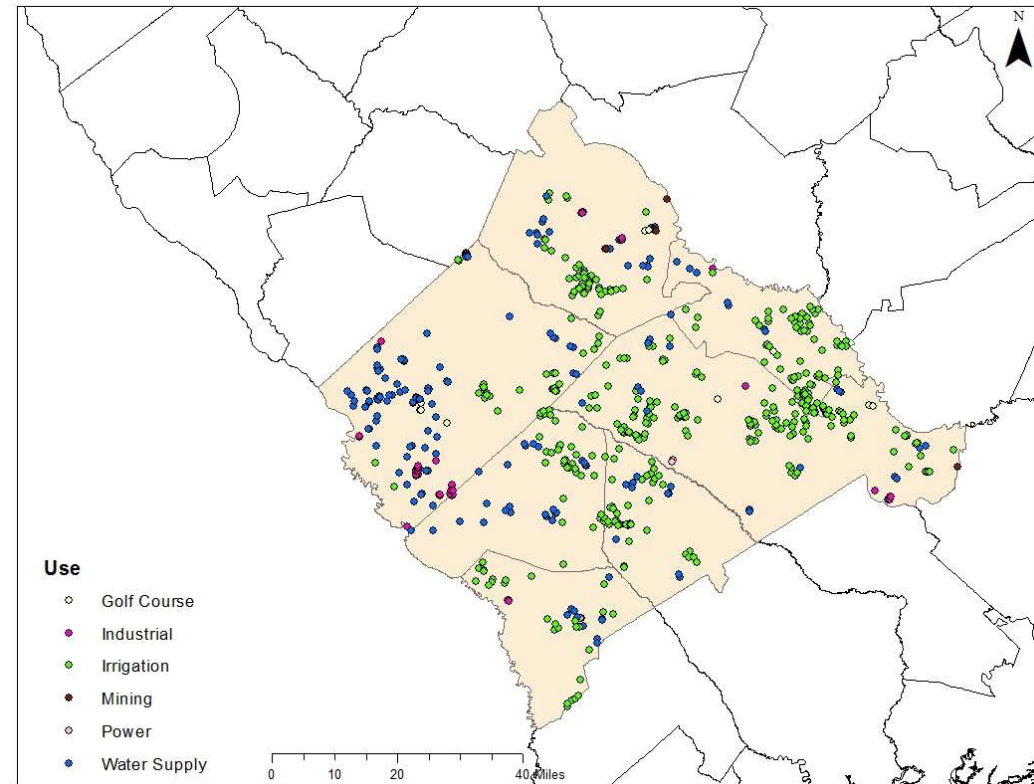
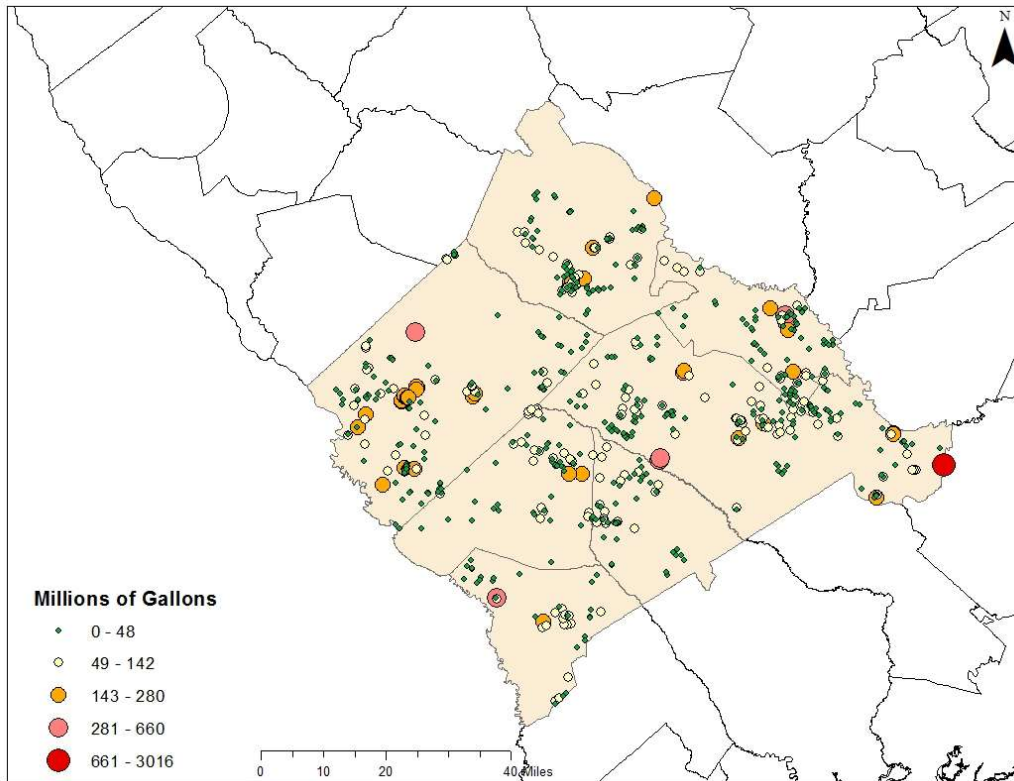


Groundwater Use By Water Use Sector in Proposed Western Capacity Use Area



Monthly Use By Category for Proposed Western Capacity Use Area





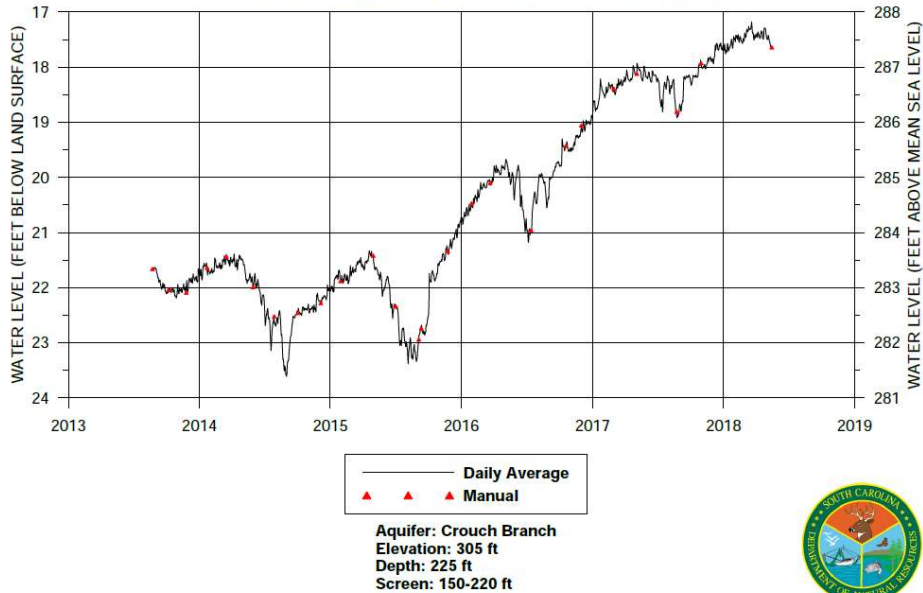


South Carolina Department of Health and Environmental Control

Groundwater Levels in Proposed Western Capacity Use Area

Lexington County

LEX-0823 Daily Average and Manual Water Levels

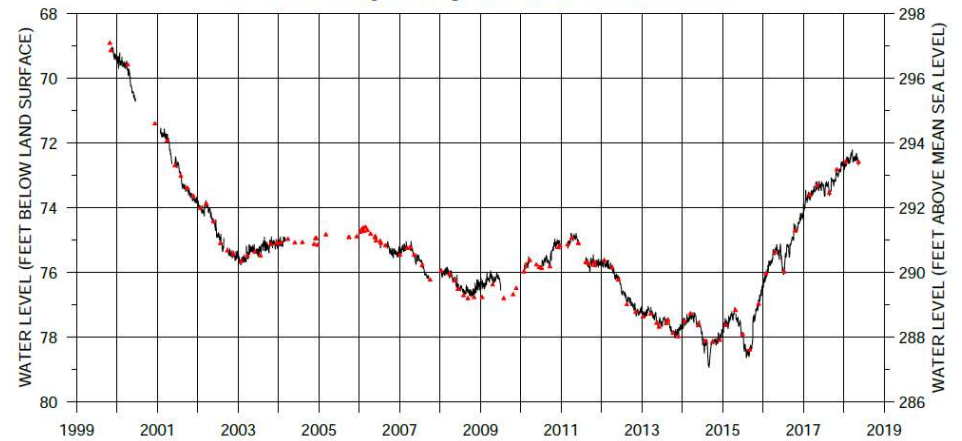


— Daily Average
 ▲ Manual

Aquifer: Crouch Branch
Elevation: 305 ft
Depth: 225 ft
Screen: 150-220 ft



LEX-0844 Daily Average and Manual Water Levels



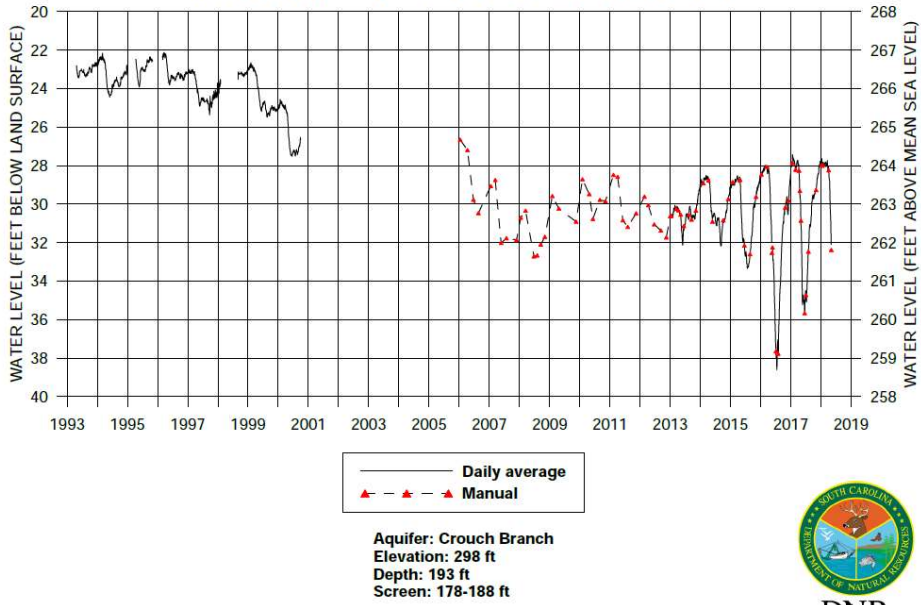
— Daily Average
 ▲ Manual

Aquifer: McQueen Branch
Elevation: 366 ft
Depth: 522 ft
Screen: 392-502 ft

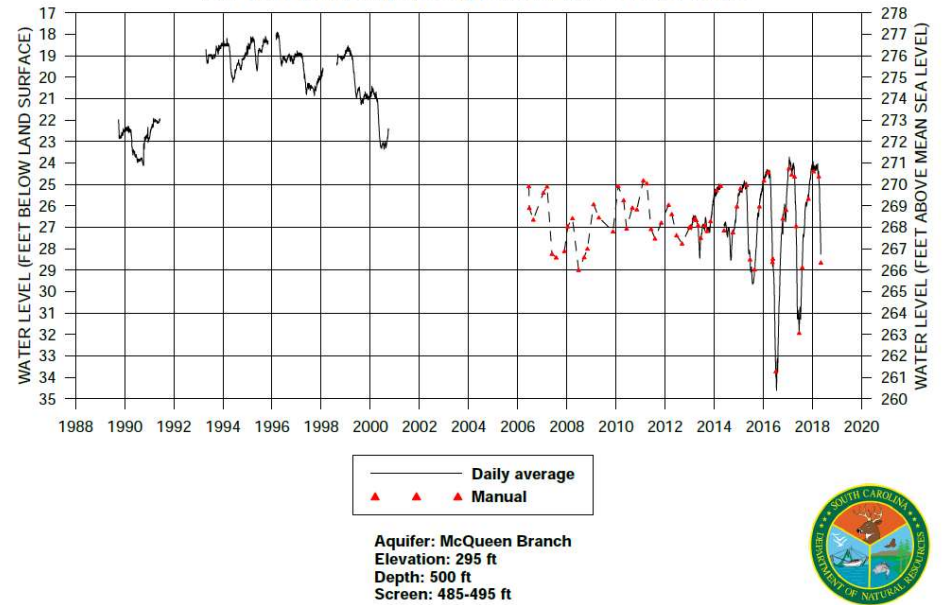


Aiken County

AIK-0847 (C3) Daily Average and Manual Water Levels

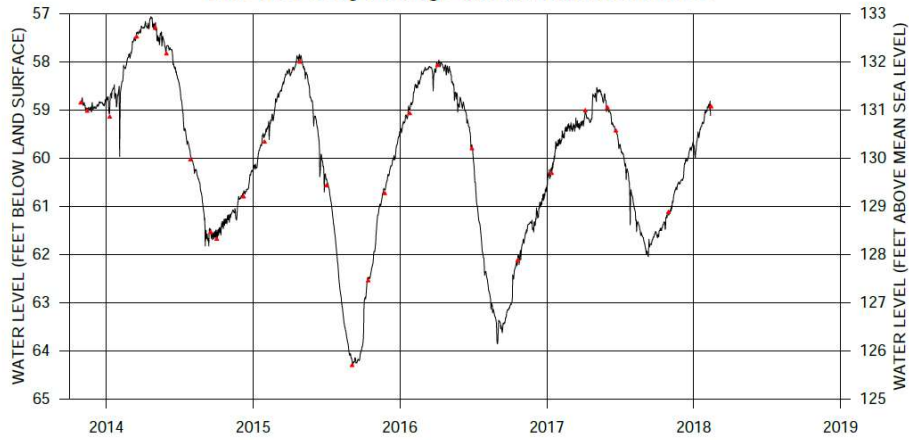


AIK-0826 (C3) Daily Average and Manual Water Levels



Calhoun County

CAL-0193 Daily Average and Manual Water Levels

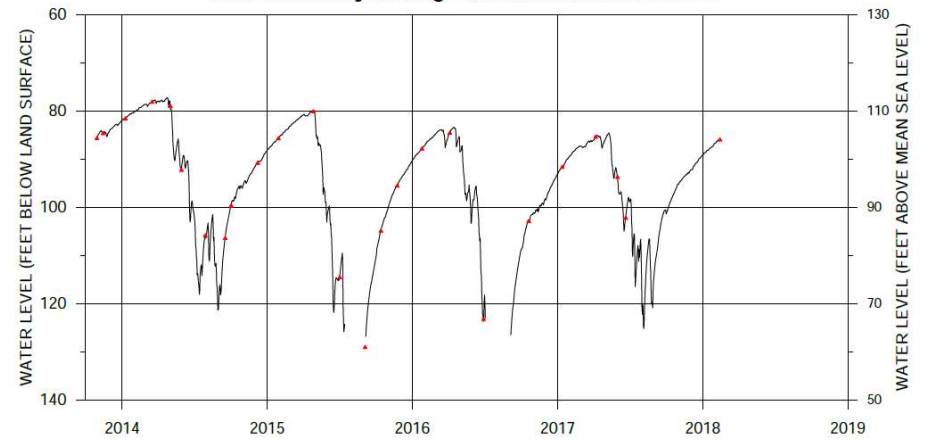


— Daily Average
▲ Manual

Aquifer: Gordon
Elevation: 190 ft
Depth: 100 ft
Screen: 85-95 ft



CAL-0194 Daily Average and Manual Water Levels



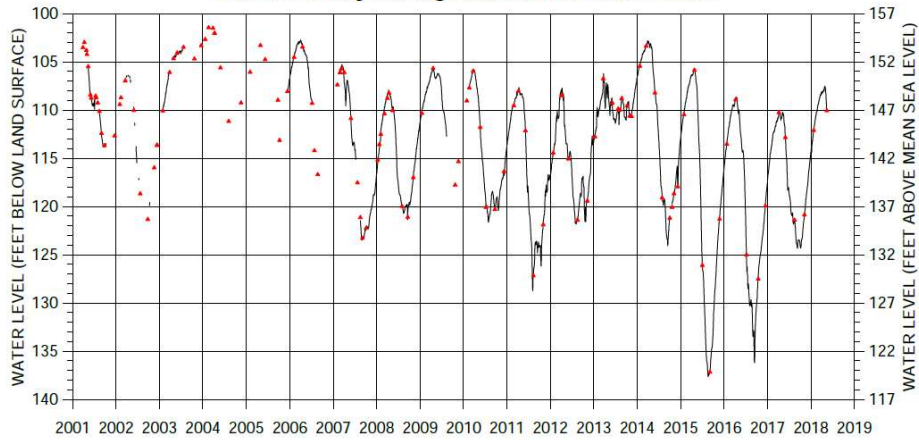
— Daily Average
▲ Manual

Aquifer: Crouch Branch
Elevation: 190 ft
Depth: 254 ft
Screen: 239-249 ft



Orangeburg County

ORG-0393 Daily Average and Manual Water Levels

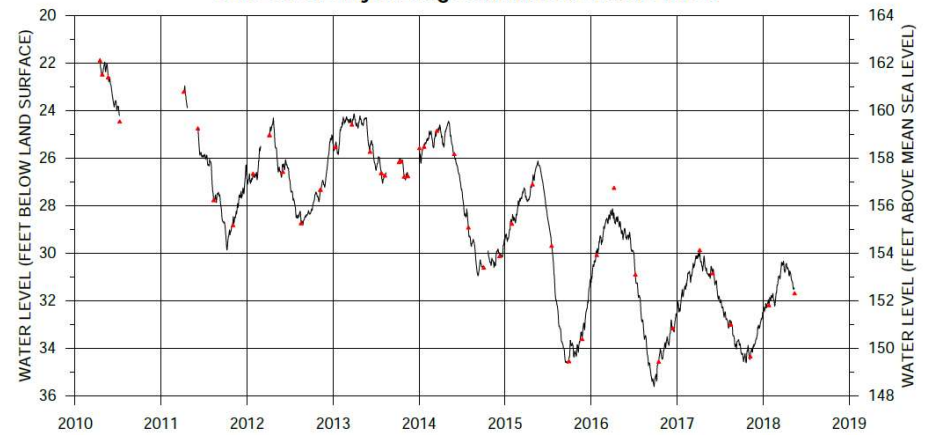


— Daily Average
▲ Manual

Aquifer: Crouch Branch
Elevation: 257 ft
Depth: 463 ft
Screen: 423-463 ft



ORG-0079 Daily Average and Manual Water Levels



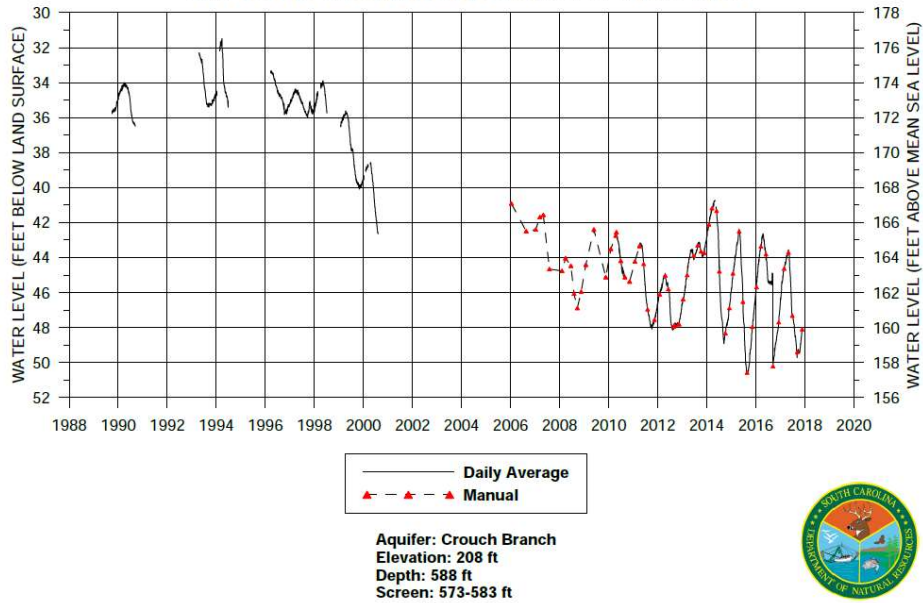
— Daily Average
▲ Manual

Aquifer: McQueen Branch
Elevation: 184 ft
Depth: 895 ft
Screen: 843-974 ft

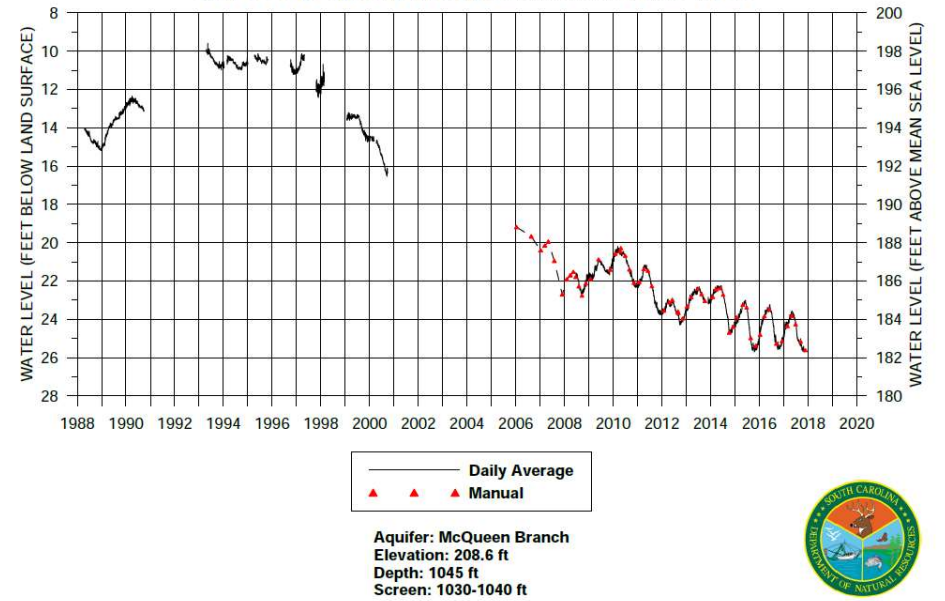


Barnwell County

BRN-0353 (C-6) Daily Average and Manual Water Levels

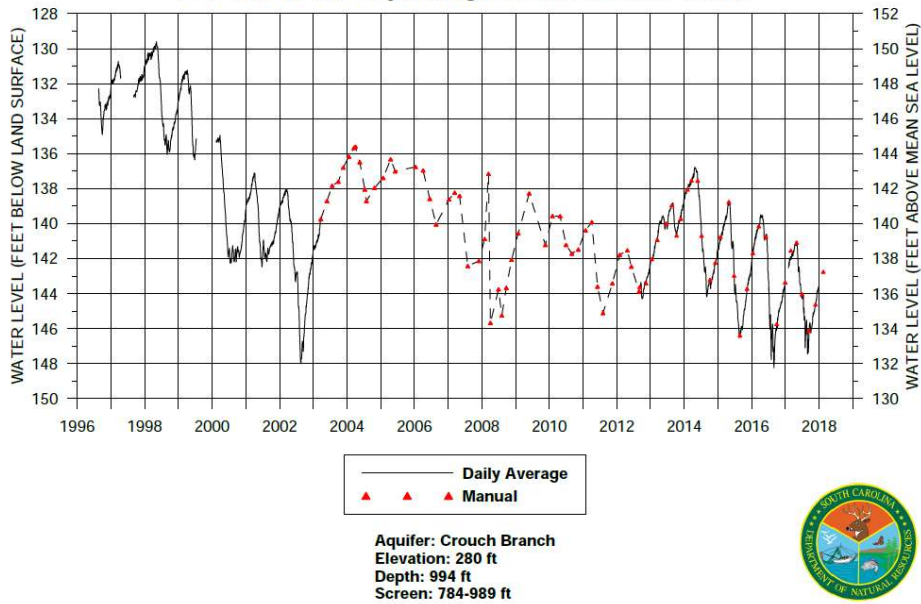


BRN-0349 (C-6) Daily Average and Manual Water Levels

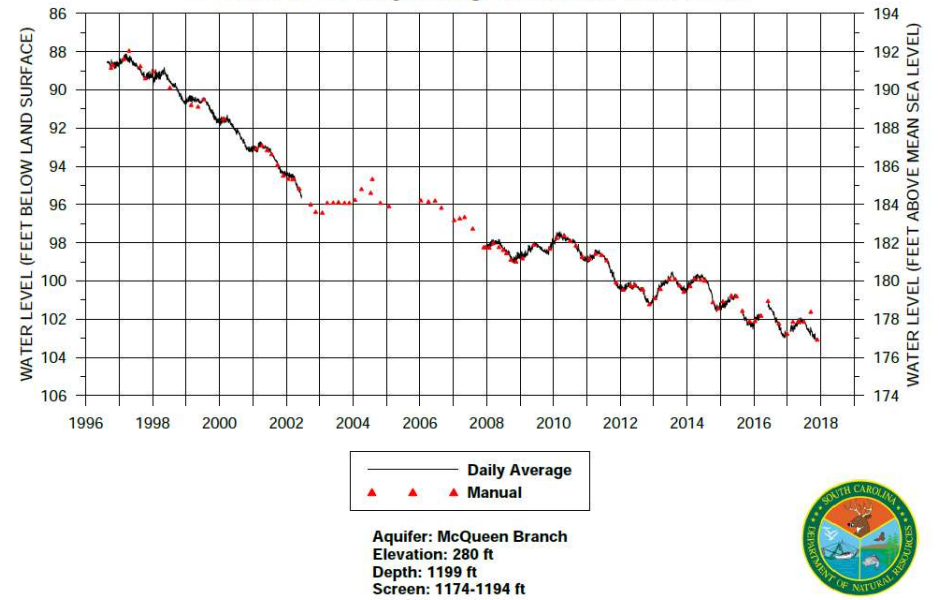


Allendale County

ALL-0376 (C-10) Daily Average and Manual Water Levels



ALL-0377 (C-10) Daily Average and Manual Water Levels





South Carolina Department of Health and Environmental Control

Potential Negative Impacts of Over Pumping in Proposed Western Capacity Use Area

Groundwater Balance

Groundwater Deposits

Recharge
Surface water inflow
Water injection



Change in Groundwater Storage (Savings)

Lowering of water table
System compaction



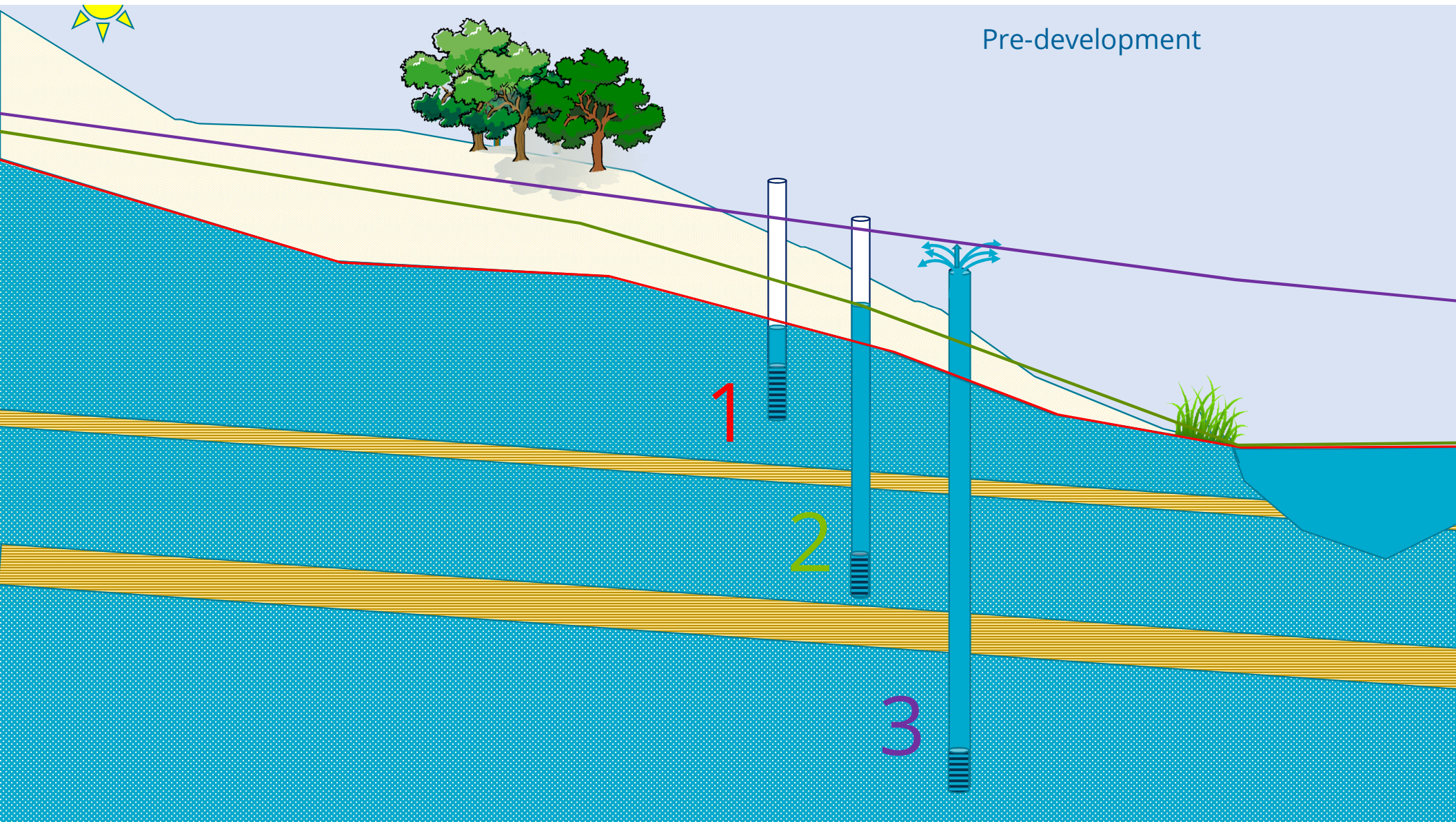
Natural Withdrawals

Surface water discharge
Springs
Evapotranspiration



Well Withdrawals

Water supply
Industrial
Irrigation



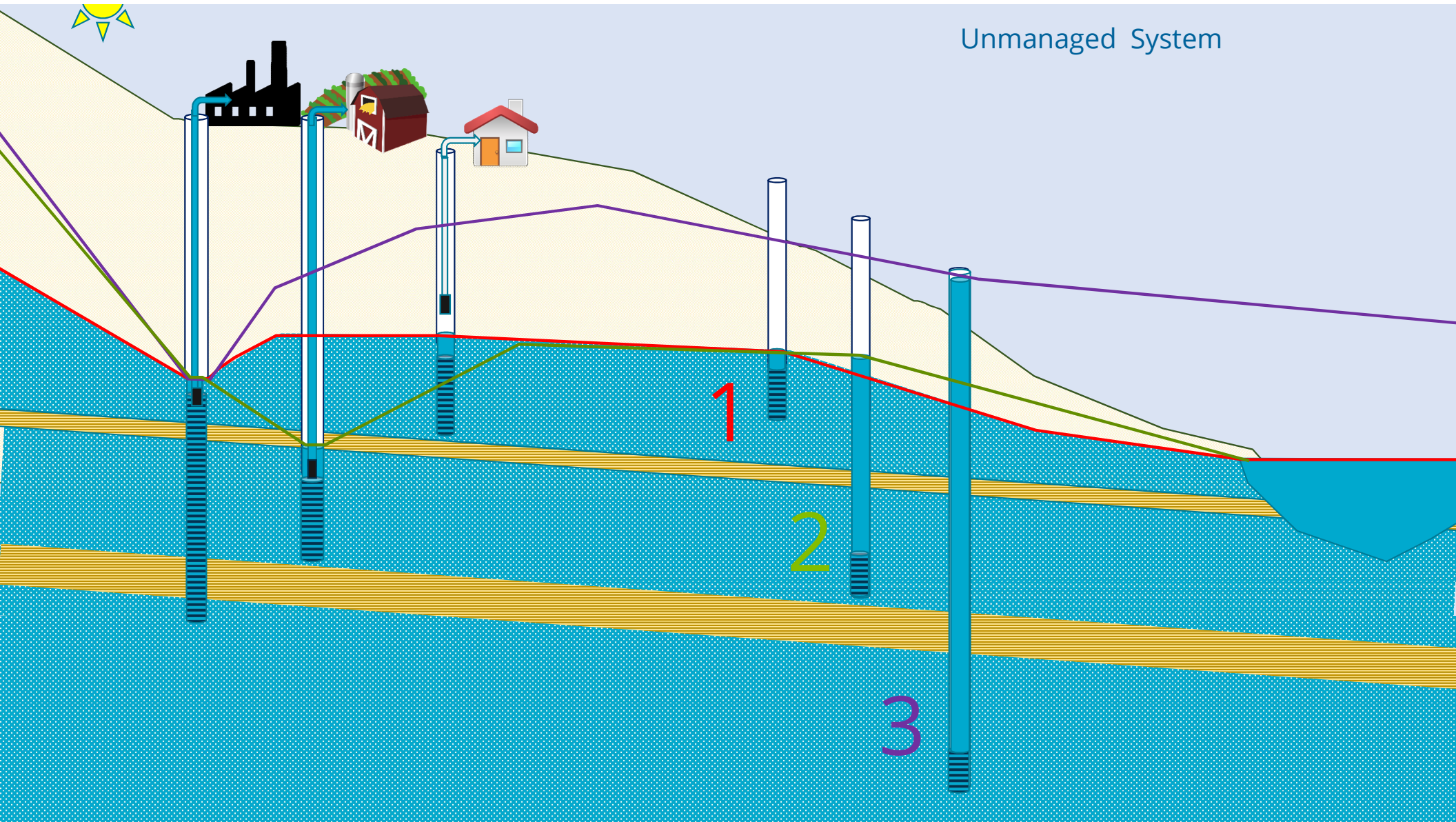
Pre-development

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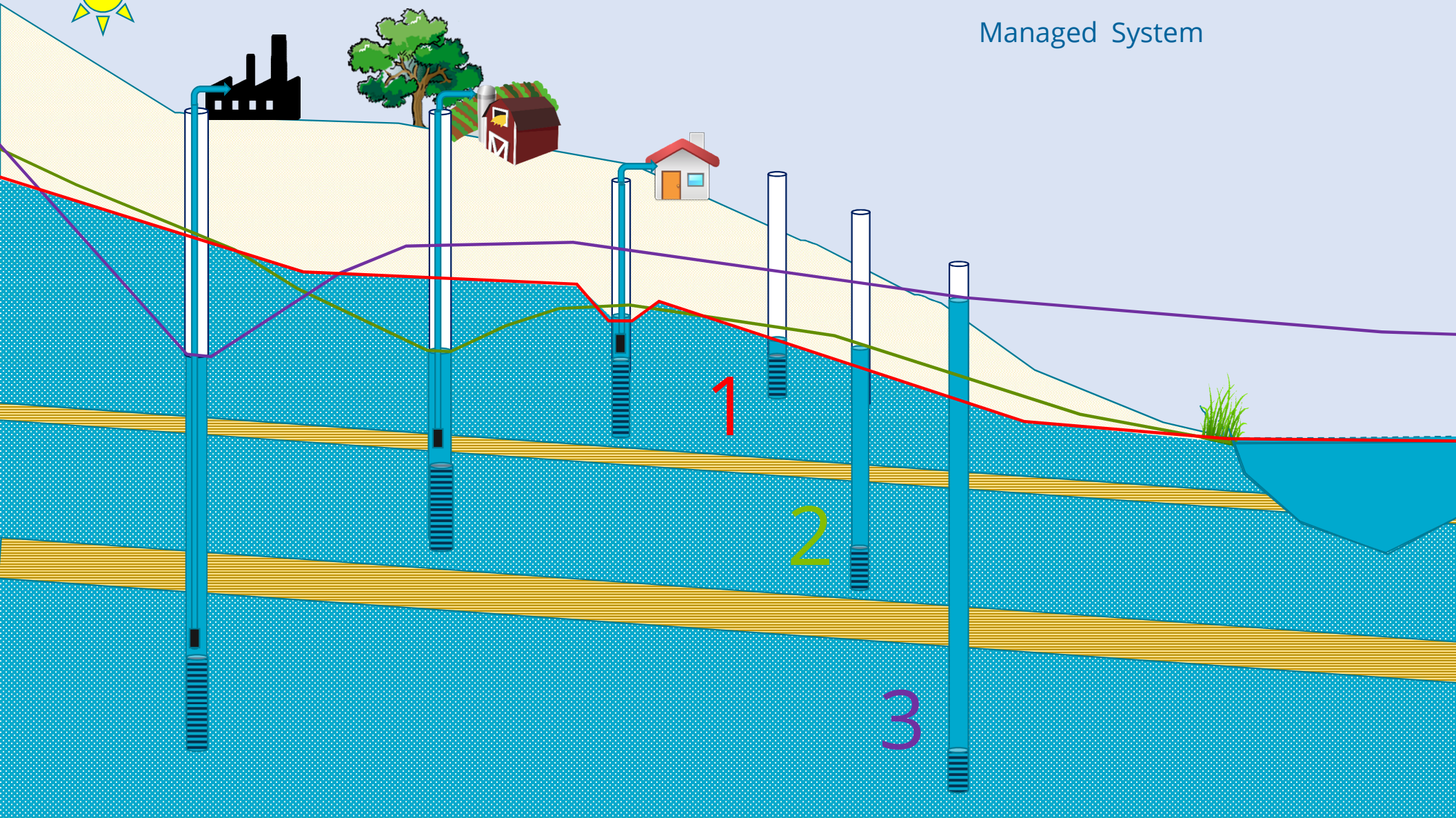
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3

Unmanaged System



Managed System





Capacity Use Designation is Appropriate

- Number of high capacity wells have increased
- Increased demand on groundwater system has occurred and is expected to continue
- Potential for negative impacts to existing users and the natural system
- Management of the resource will get more difficult in the future



Next Steps if Designation Approved

- Engage stakeholders to develop a local Groundwater Management Plan
- Bring the local Groundwater Management Plans before the DHEC Board for approval
- Evaluate and issue permits in accordance with Board approved Groundwater Management Plans
 - Existing users would be issued permits based on demonstrated past demand and industry standards



Permitting Process

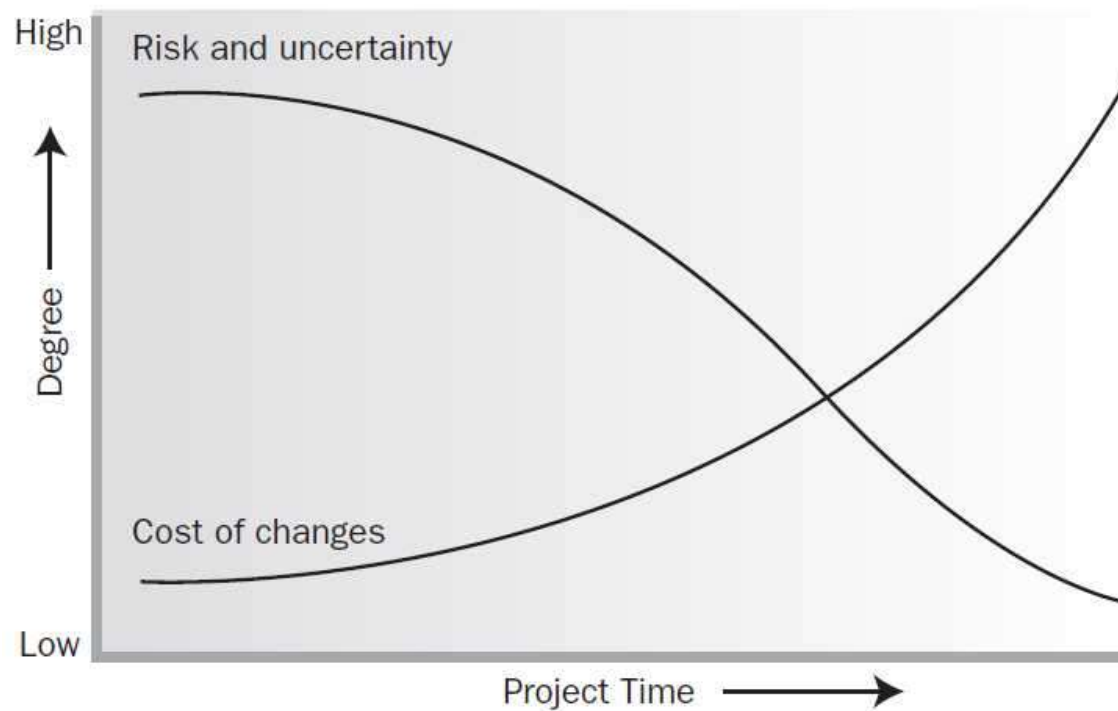
1. An application and required documentation is submitted to the Department by a potential groundwater withdrawer
2. Department reviews application for completeness
3. Department performs a technical review of permit
4. All new and modified permits are Public Noticed
5. A Permit to Construct is issued if new wells are requested to be installed
 - Is not a Permit to Withdraw, only authorized construction of the well(s)
6. Permit to Withdraw is issued
 - If a new well was installed, the Department requires well records be submitted prior to issuance of a permit



South Carolina Department of Health and Environmental Control

Summary

Project Lifecycle

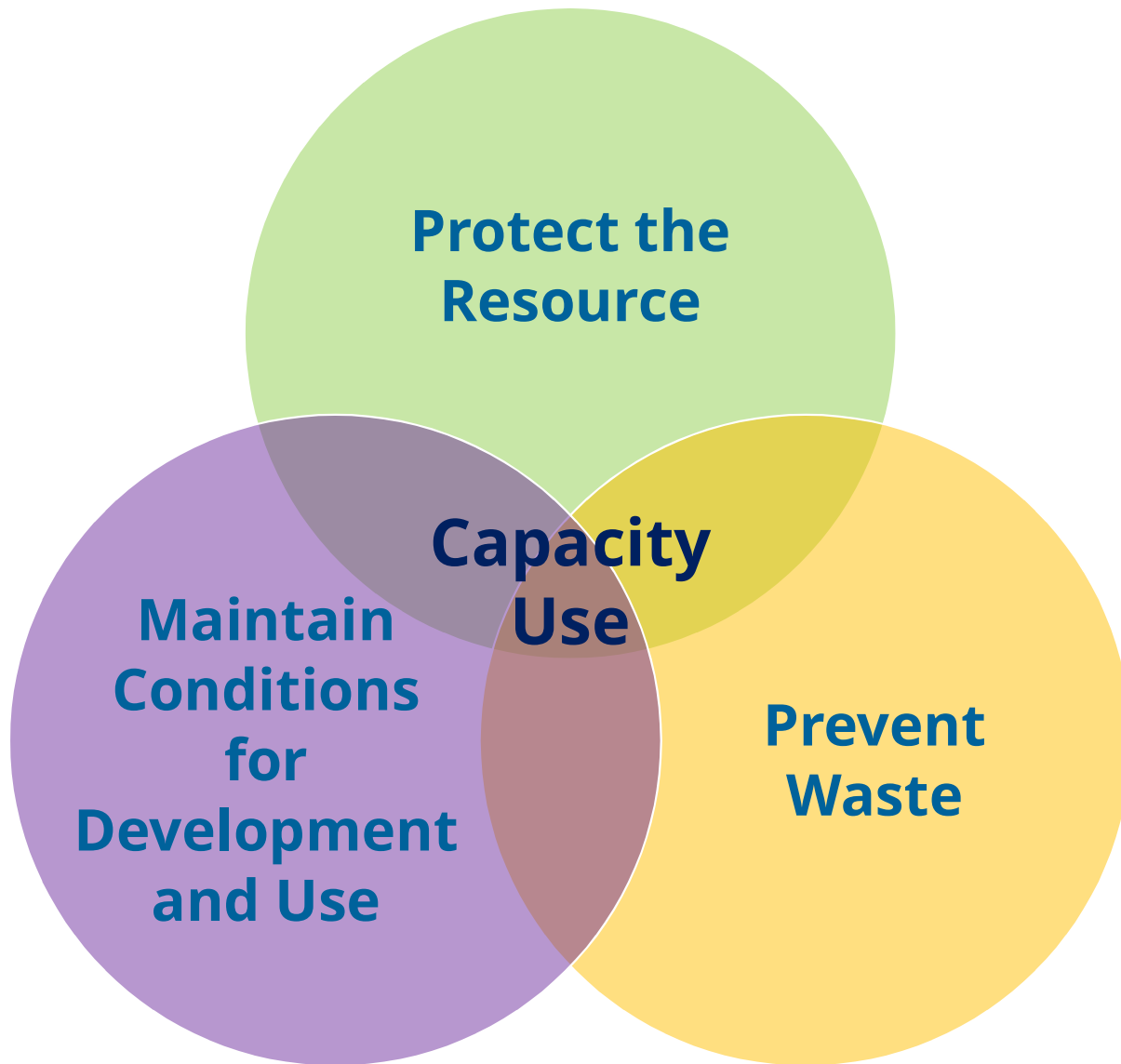




South Carolina Department of Health and Environmental Control

Groundwater Use and Reporting Act Legislative Declaration of Policy

“The General Assembly declares that the general welfare and public interest require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and **protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources.**”





South Carolina Department of Health and Environmental Control

Mike Marcus, Ph.D, Chief

Bureau of Water

MARCUSJM@dhec.sc.gov

(803) 898-4210

Alex Butler, Manager

Water Quantity Permitting Section

butlerap@dhec.sc.gov

(803) 898-3575

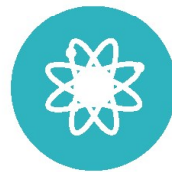
Agency Strategies

Five strategic focus areas, the imperatives that unite our teams, align our work, and enable our Agency to move forward in our ambitious mission.



Education and Engagement

Over 2 years of education, public participation & conversation with area and statewide stakeholders.



Science in Action

Relying on existing science and quality data from SCDNR, USGS & DHEC for informed decision-making.



Leadership and Contribution

Following designation, continued planning and advising roles for area stakeholders.



Service and Accessibility

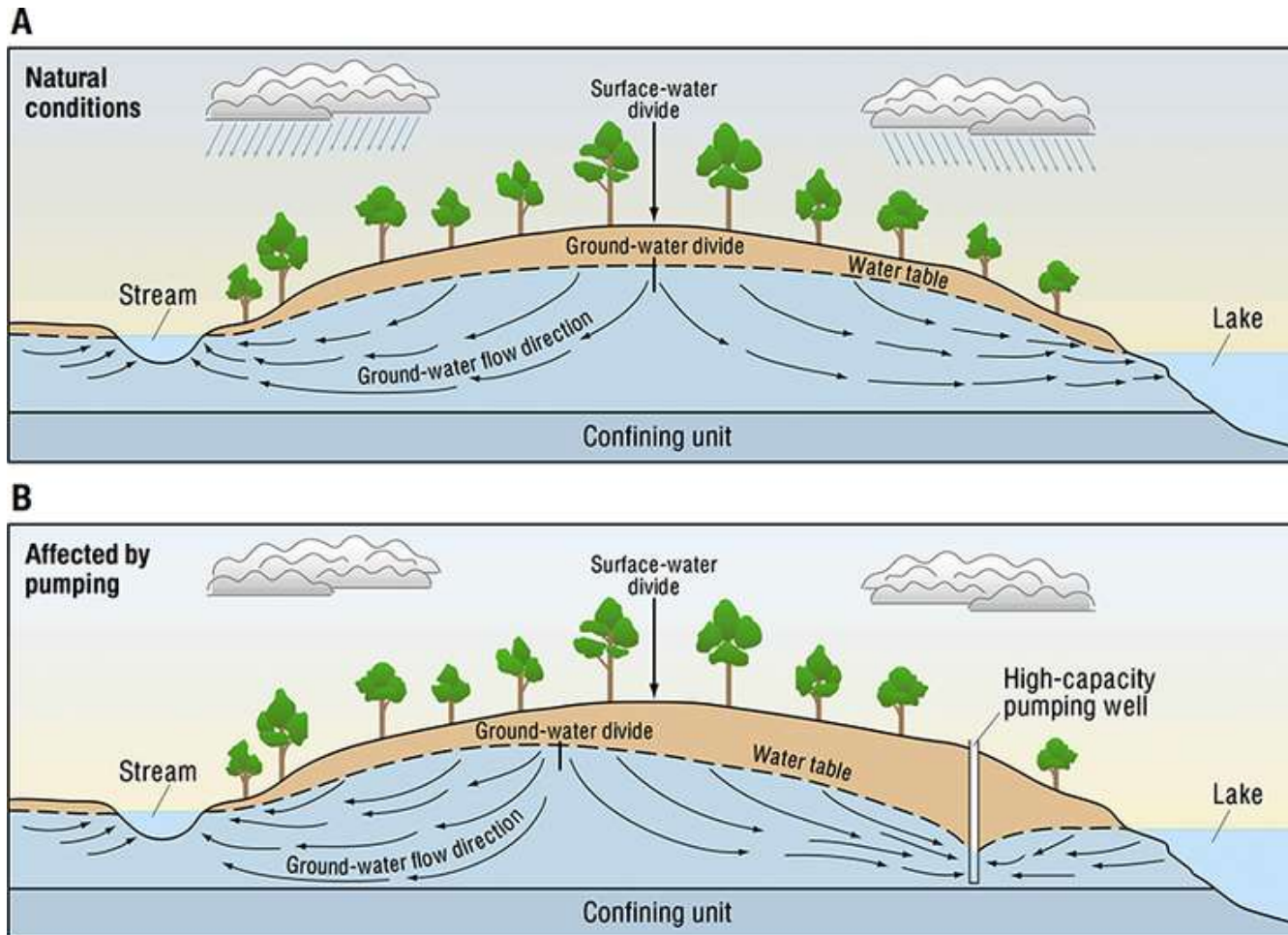
DHEC staff will continue to provide service and address needs of communities & partners with planning & permitting.

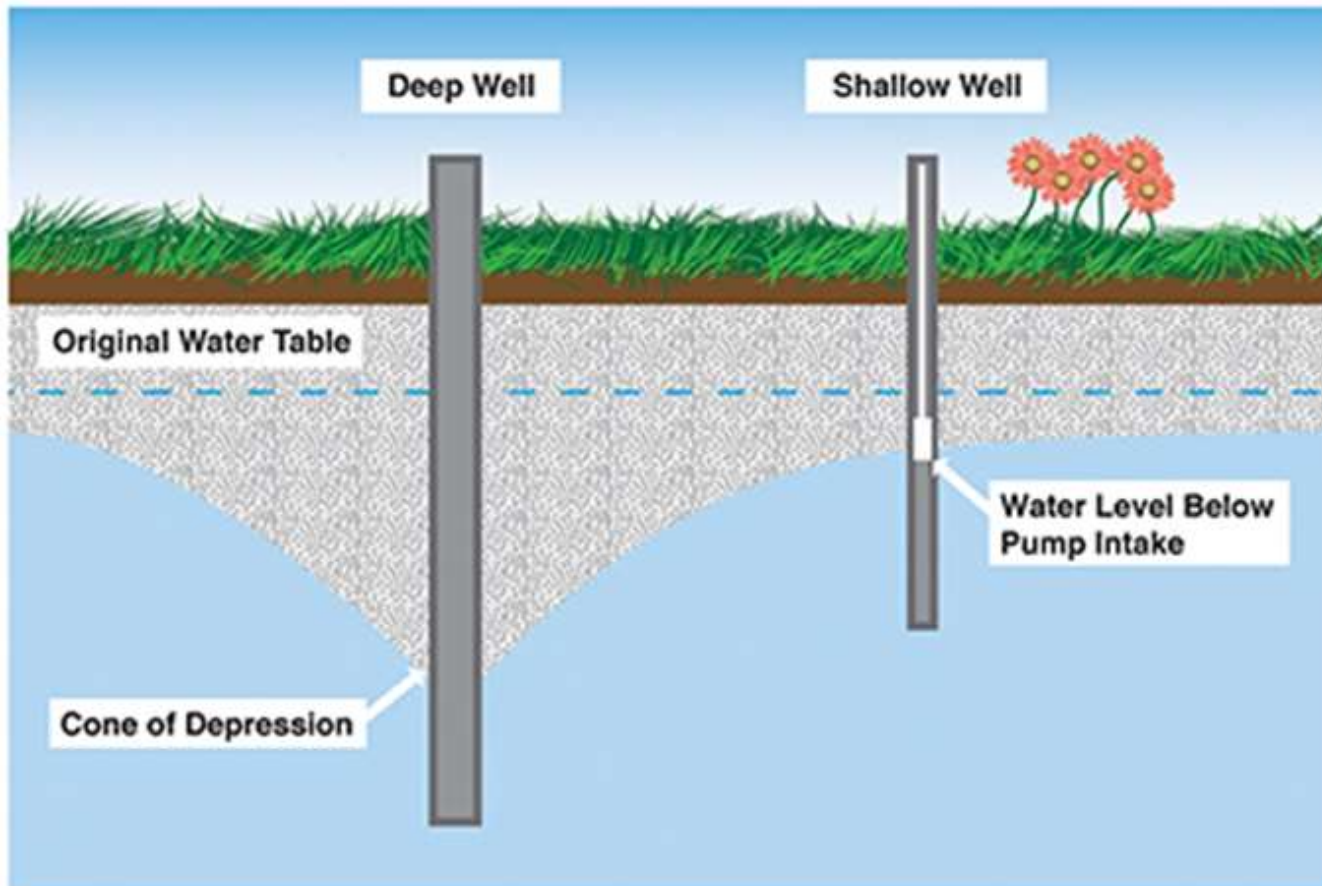


Operational Excellence

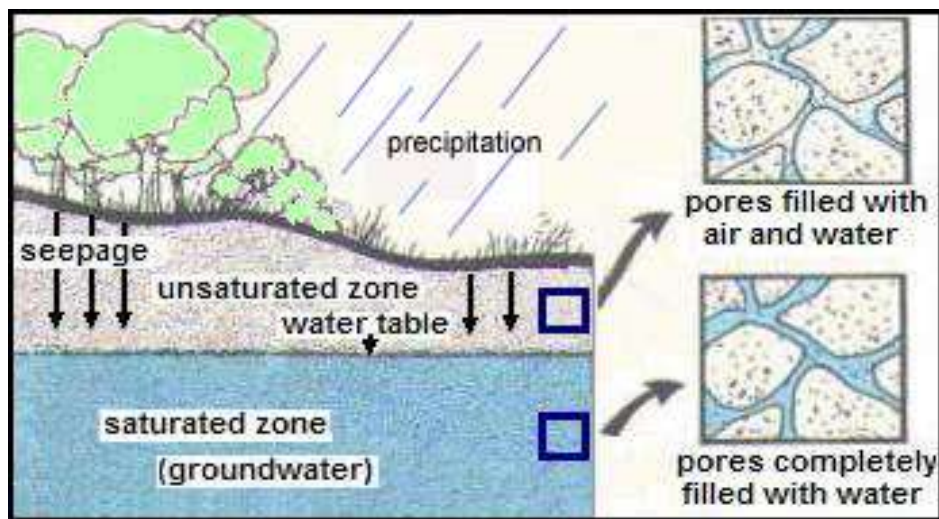
DHEC staff will integrate new data and models into plans and permits for continuous improvement.

Impacts of Groundwater Withdrawals

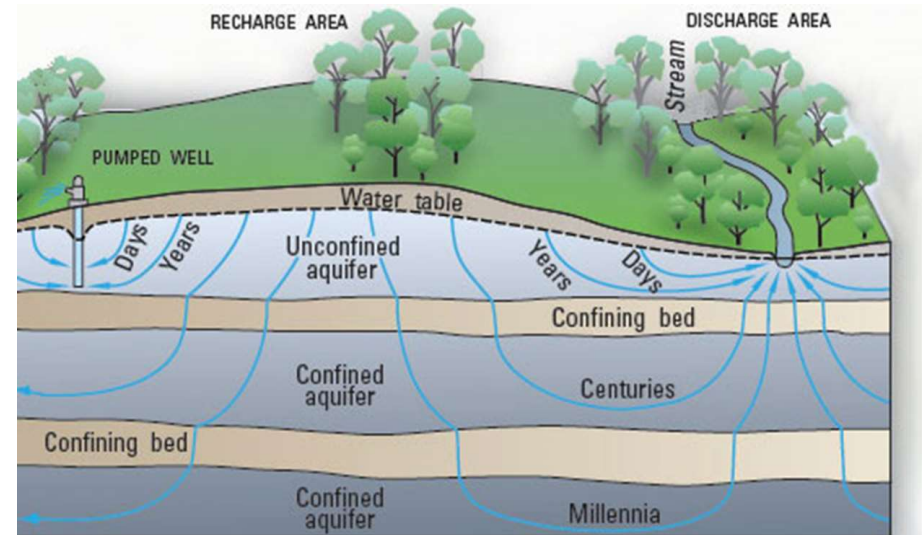




Groundwater Basics

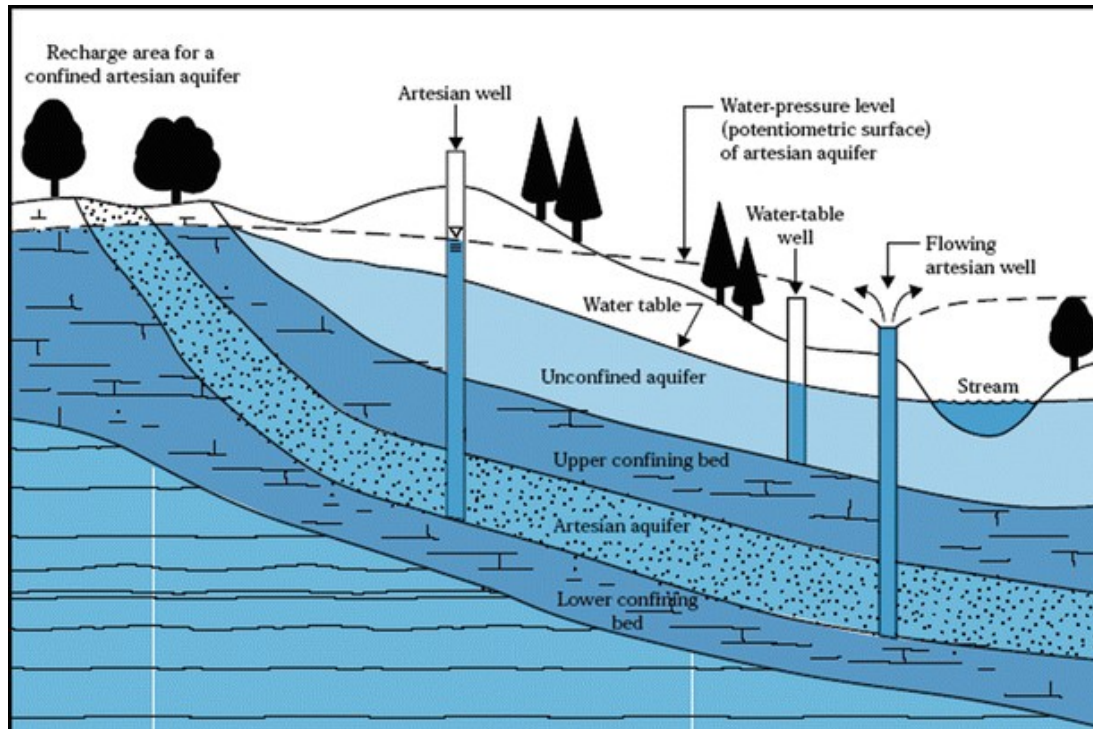


<https://www.dec.ny.gov/lands/76322.html>



<https://pubs.usgs.gov/circ/circ1139/>

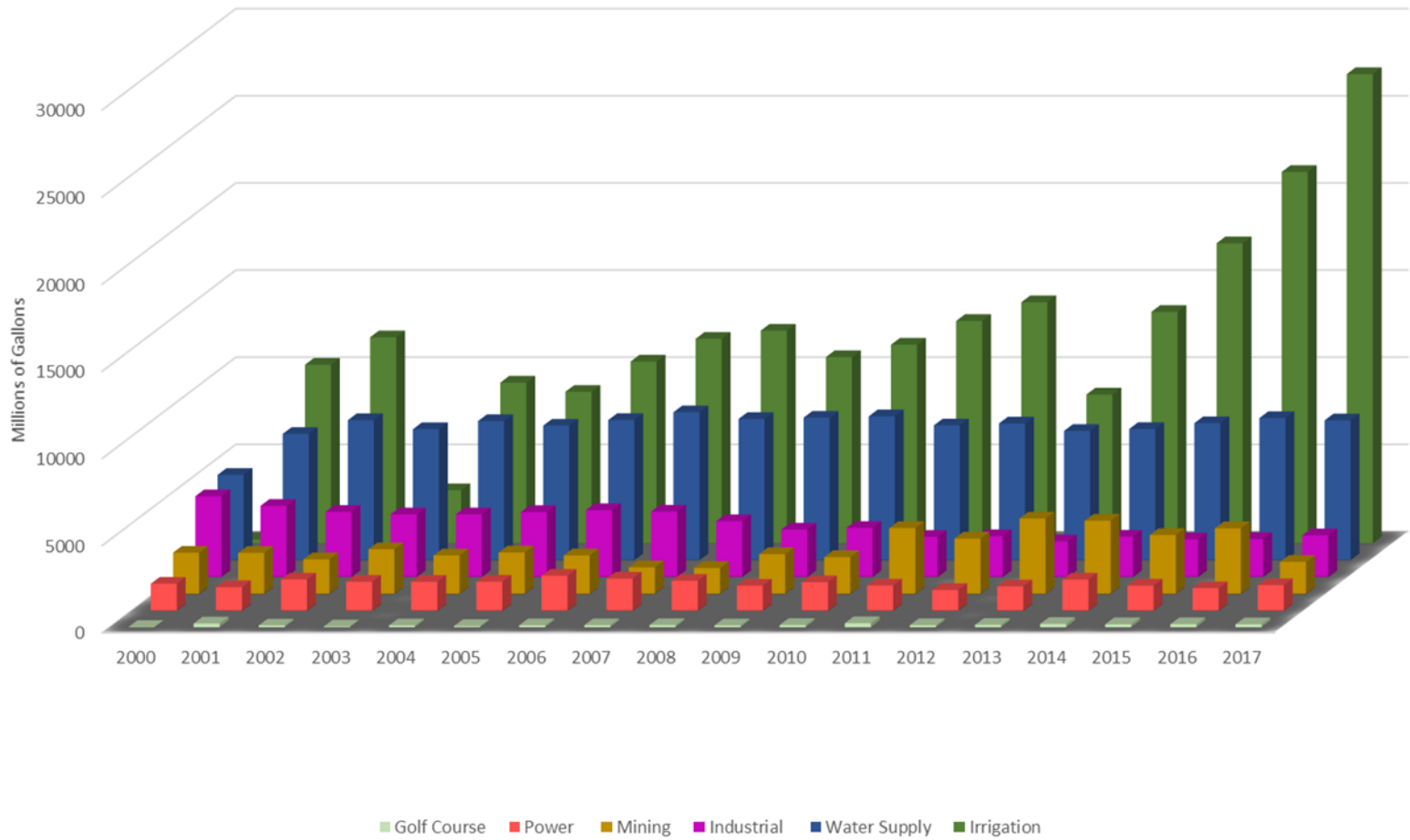
Water Levels in Wells



https://link.springer.com/chapter/10.1007/978-3-319-05699-9_10



Annual Reported Groundwater Use in Proposed Western Capacity Use Area





Proposed Western Capacity Use Area

May 25, 2017





Water Quantity Programs

- **Capacity Use Program**

- Since the 1970s
- Issue permits in designated areas of the coastal plain over 3 million gallons in any month (100,000 gallons per day)

- **Surface Water Withdrawal Permitting**

- Since June 2012
- Issue permits statewide if over 3 million gallons in any month

- **Water Use Reporting**

- All registered and permitted groundwater and surface water withdrawers report their annual water use to the department
- We compile this information and produce water use reports, which are available on our website for public use

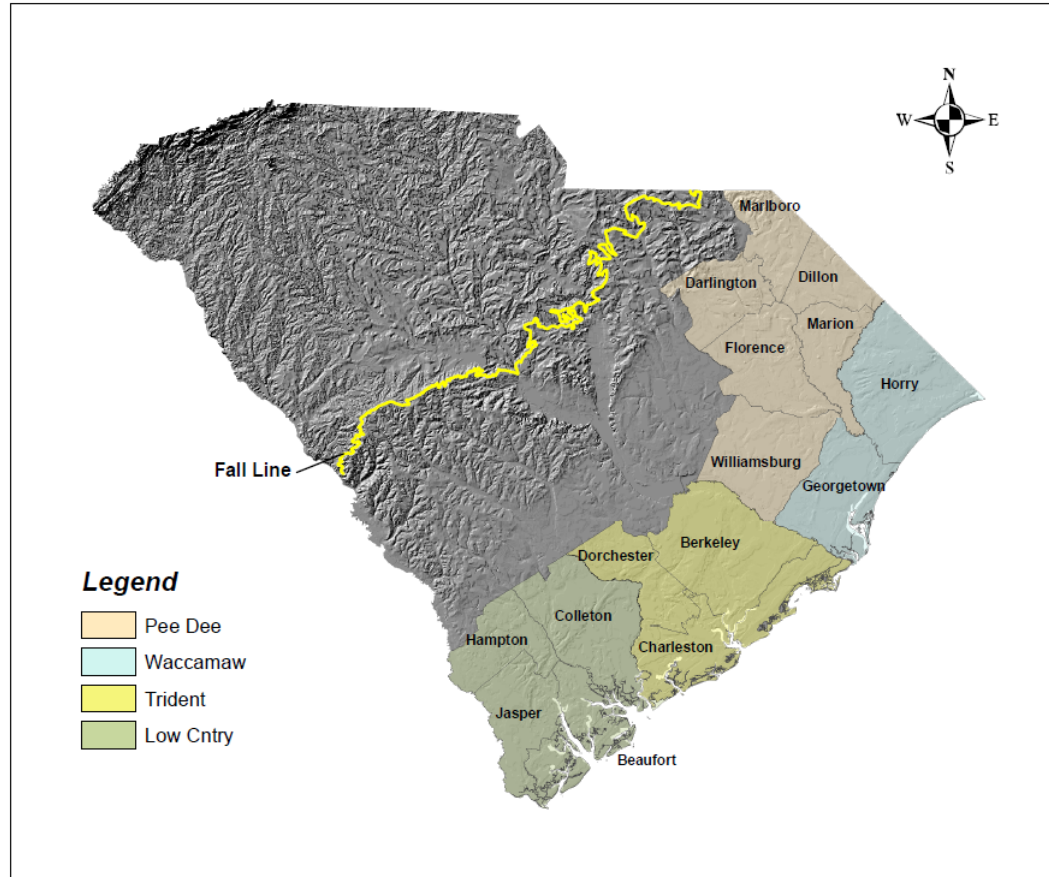


Capacity Use Area Declaration

Timeline

- **Waccamaw - June 22, 1979** (includes Georgetown, Horry Counties)
- **Low Country - July 24, 1981** (includes Beaufort, Colleton and Jasper Counties; Hampton County was added on June 10, 2008)
- **Trident - August 8, 2002** (includes Berkeley, Charleston, and Dorchester Counties)
- **Pee Dee - February 12, 2004** (includes Darlington, Dillon, Florence, Marion, Marlboro, and Williamsburg Counties)

Groundwater Permitting (Capacity Use Areas)



Ground Water Permitting (Capacity Use Areas)

- **Goal is to maximize the use of the resource while preventing harm to aquifer or other users**
- **Reasonable use** (*e.g.*, how much water for a particular crop)

Ground Water Permitting (Capacity Use Areas)

- **How it works, permit process**
 - Submit an application if wanting to withdrawal over 3 million gallons in any month (about 100,000 gpd)
 - No permit fee
 - Placed on public notice, in the Trident Area provided to BCD GOG for consistency review
 - Permits usually issued within 60 days of application
- **Benefits of Capacity Use designation**
 - Investigate complaints of shallow (home) wells being impacted
 - Can locate new wells in areas that will support their water needs, provides more certainty for economic development
 - Include best management practices, conservation, efficiency, in permit
 - Pro-active measures to have sustainable resources, not have to take a dramatic reduction to solve problems later

The Capacity Use Program Works

Trident Capacity Use Area Successes:

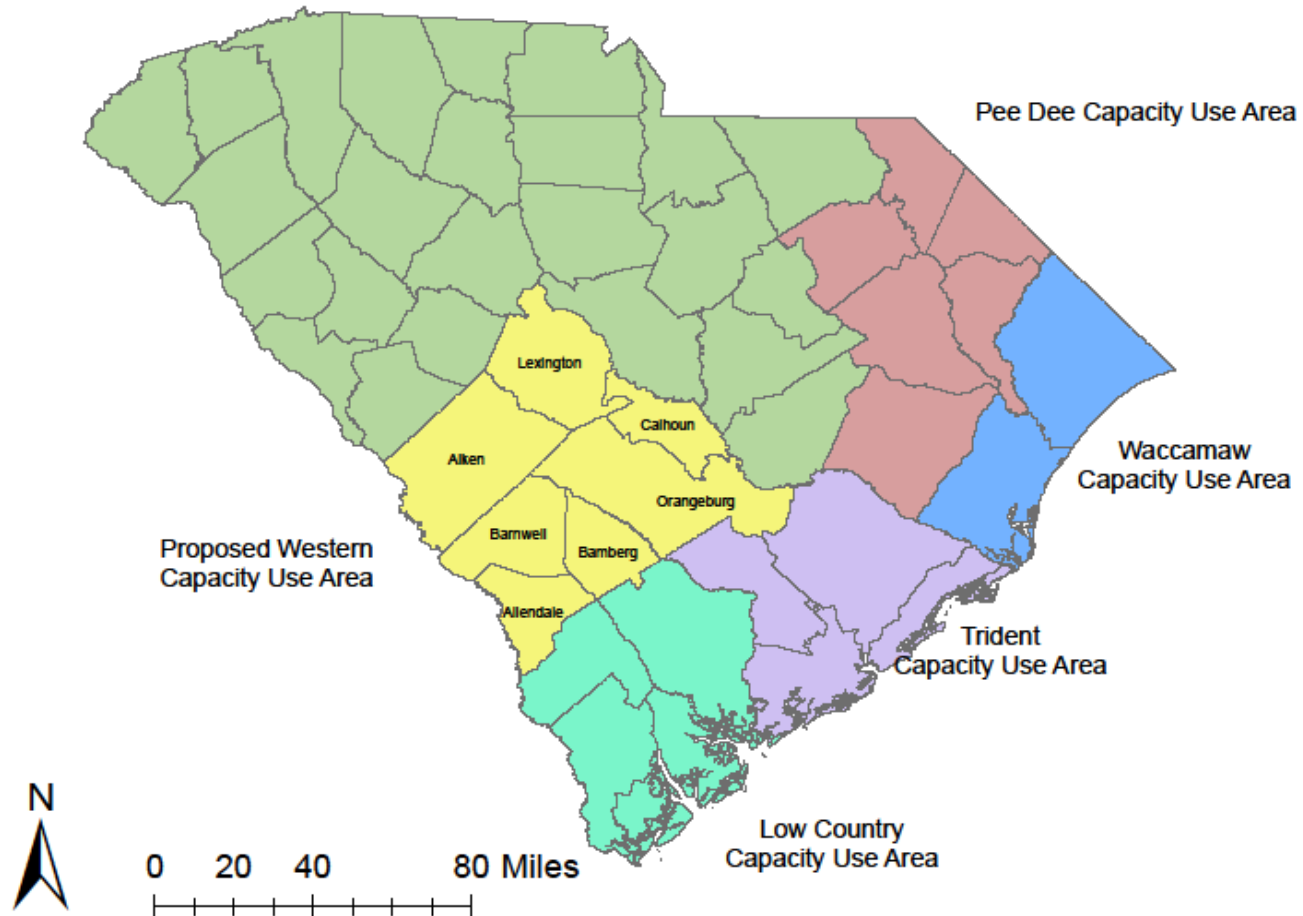
- Comparing SC DNR's 2001 potentiometric map to the 2014 potentiometric map, areas like Kiawah Island, Charleston County, and Moncks Corner, Berkeley County, **water levels have rebounded by more than 50 feet.**
- **Zones of concern in the tri-county area have shrunk to localized pockets,** instead of region-wide deficits.
- **Increased water levels are attributed to a combination of our permitting strategy, raised awareness about water conservation, and use of alternative water sources.**

The Capacity Use Program Works

Waccamaw Capacity Use Area Successes:

- Comparing SC DNR's 2001 potentiometric map to the 2014 potentiometric map, **Myrtle Beach, Horry County**, has seen a **water-level increase of over 50 feet**, and **throughout Georgetown County there has been a 75 feet increase** in water levels.
- There is **now only one small pocket of area at or below mean average sea level** in the entire capacity use region.
- **Increased water levels are attributed to** a combination of **our permitting strategy, raised awareness about water conservation, and use of alternative water sources.**

South Carolina Proposed Western Capacity Use Area





3 Main Aquifers for the Proposed Western Area

Floridan/Gordon Aquifers – In the Proposed Western Carolina area, this aquifer is approximately 150 feet thick to 400 feet thick down dip.

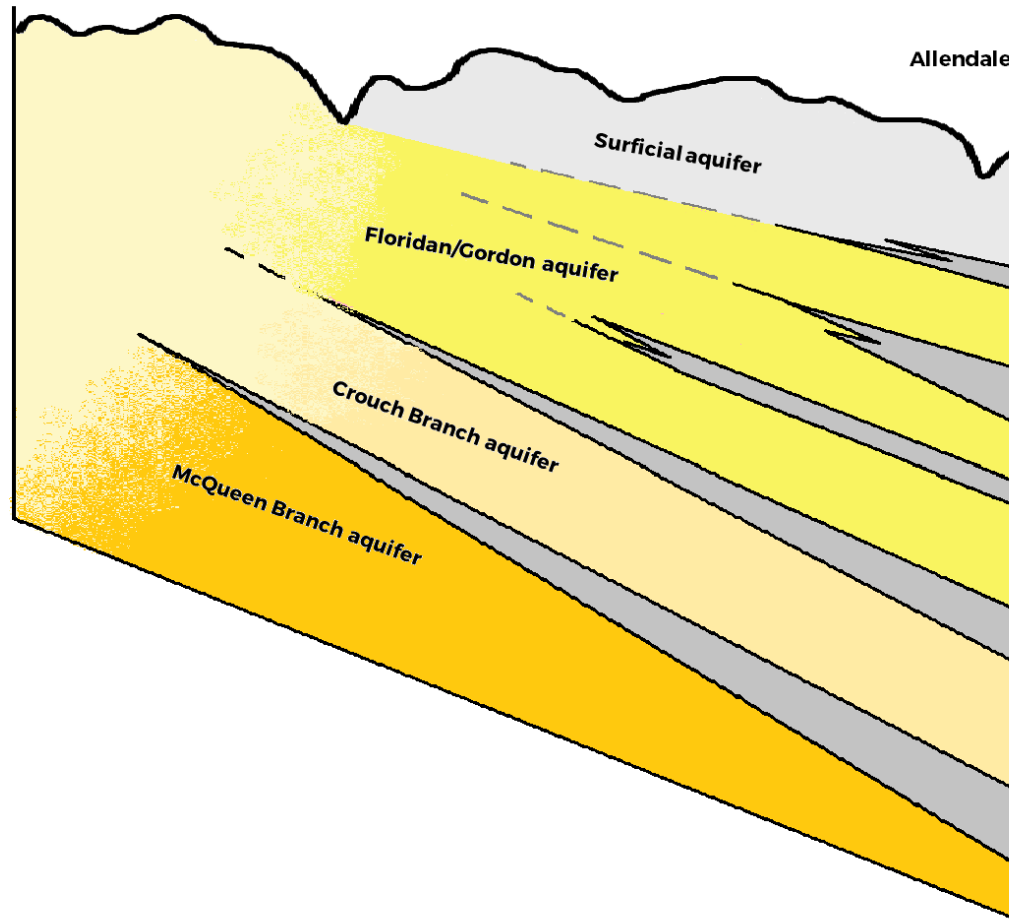
Crouch Branch Aquifer – In the Proposed Western Carolina area, this aquifer is approximately 200 feet thick 300 feet thick down dip.

Middendorf/McQueen Branch Aquifer – In the Proposed Western Carolina area, this aquifer is approximately 150 feet thick to 300 feet thick down dip.

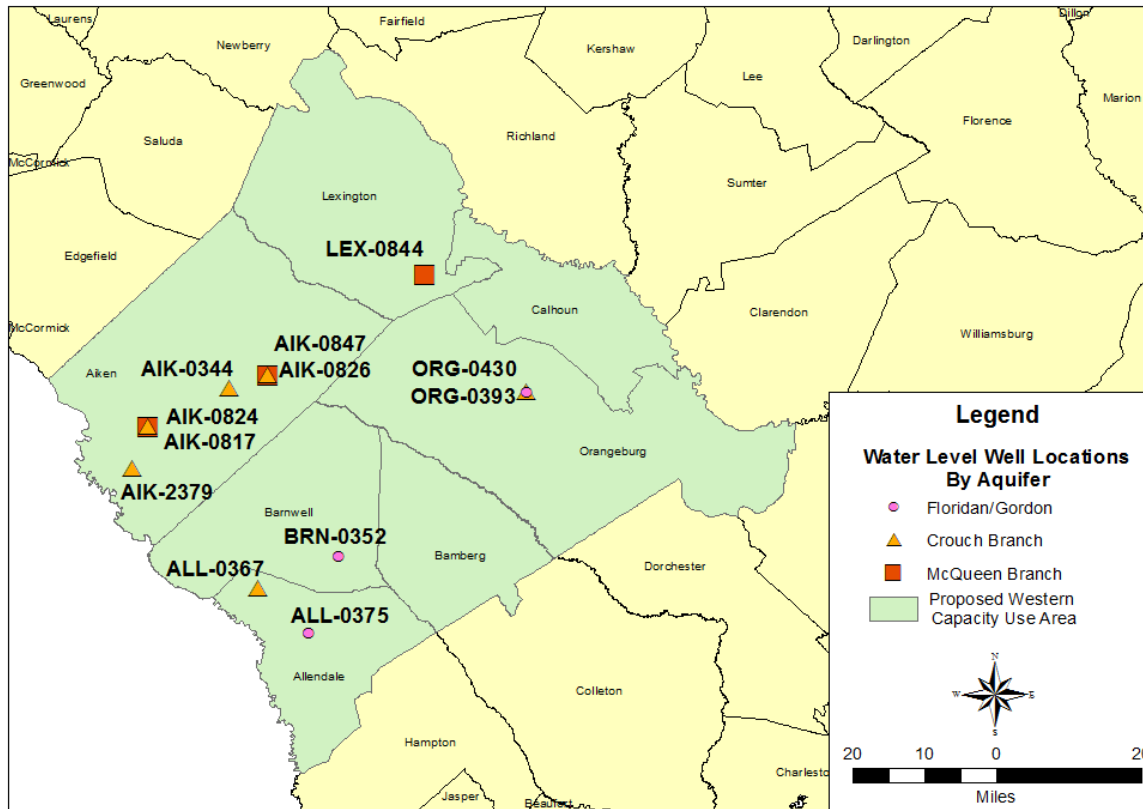
Western Region Aquifers

Aiken County

Allendale County



Water Level Monitoring Well Locations





Why is the Western Region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties) being considered ?

- Section 49-5-60 of the *Groundwater Use and Reporting Act* states “were excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare, or where conditions pose a significant threat to the long-term integrity of a groundwater source...shall designate a capacity use area
- A capacity use area must be designated by the board based on scientific studies and evaluation of resources and may, or may not, conform to political boundaries



Why is the Western Region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties) being considered ?

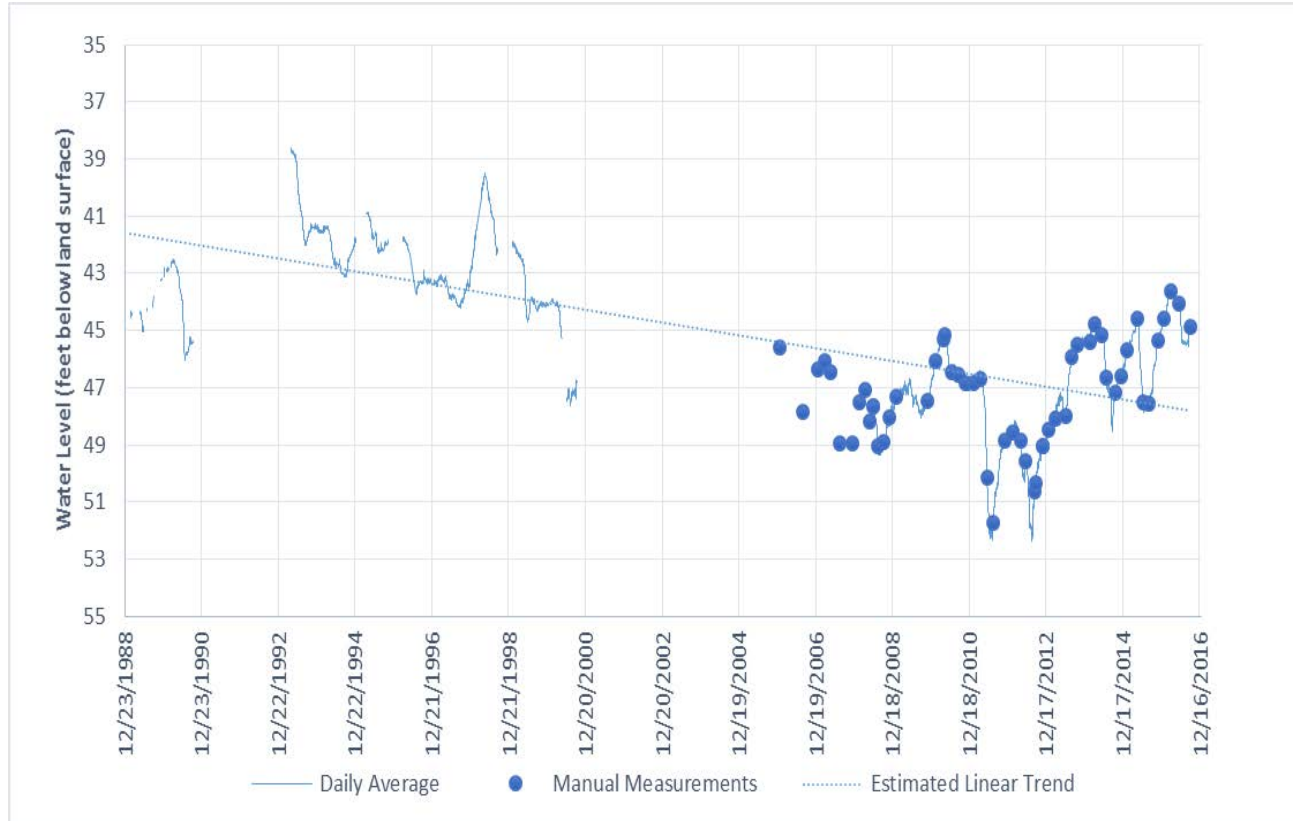
- The current documented increased demand and potential increases in future demand.
- Estimated declines in groundwater levels as follows:
- Since 1998 in the Floridan/Gordon aquifers; Allendale and Barnwell Counties (a decline of 8 feet). The aquifers are interconnected beneath the counties in this region.
- Since 2001 in the Black Creek/Crouch Branch aquifer; water level declines in Aiken County (< 5 feet), Allendale, Barnwell and Lexington Counties (5 feet), Bamberg County (10 feet), Calhoun and Orangeburg Counties (12 feet).



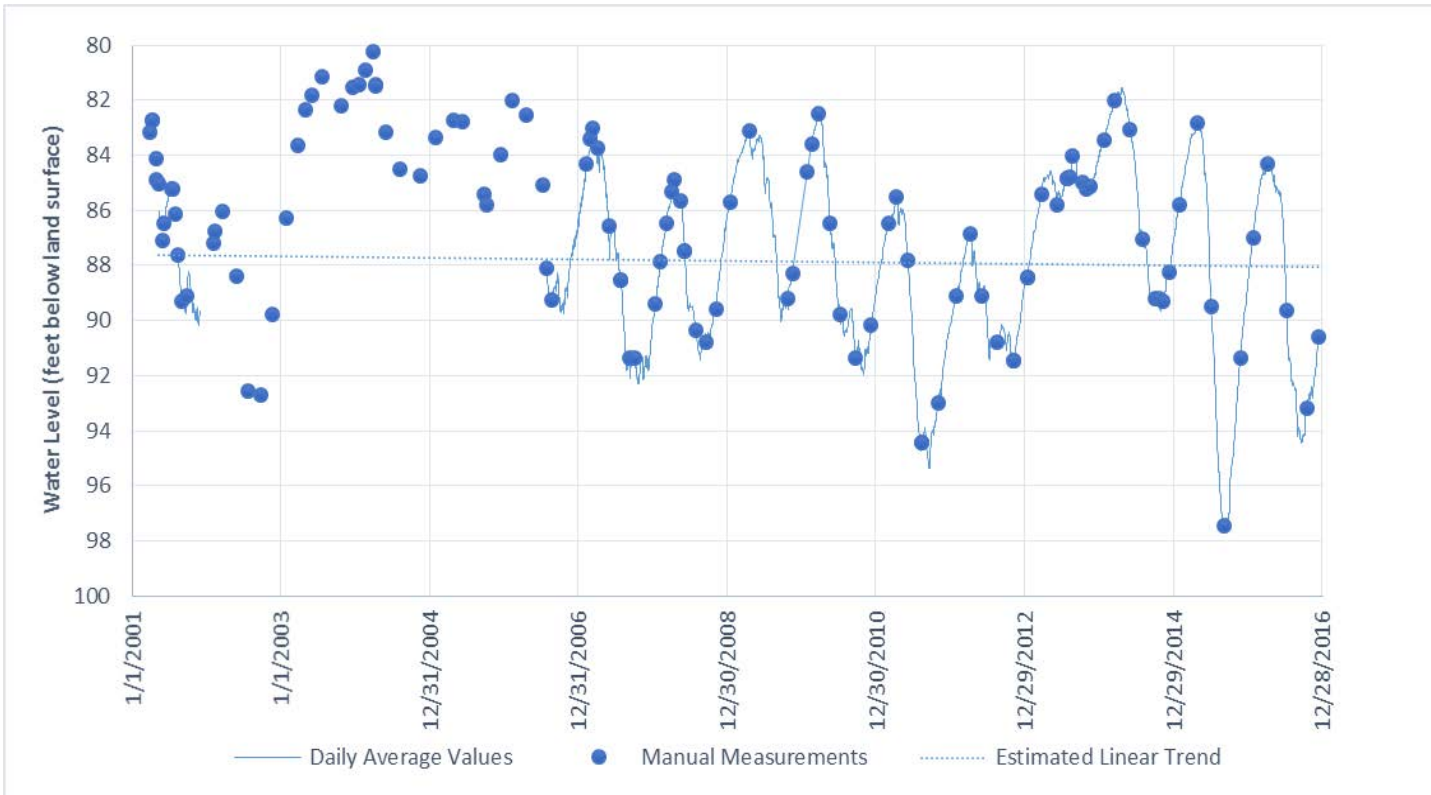
Why is the Western Region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties being considered ?

- Since 2001 in the Middendorf/McQueen Branch aquifer; water level declines in Aiken County (5 feet), Barnwell and Lexington Counties (10 feet), Allendale County (12 feet), Bamberg, Calhoun and Orangeburg Counties (15 feet).

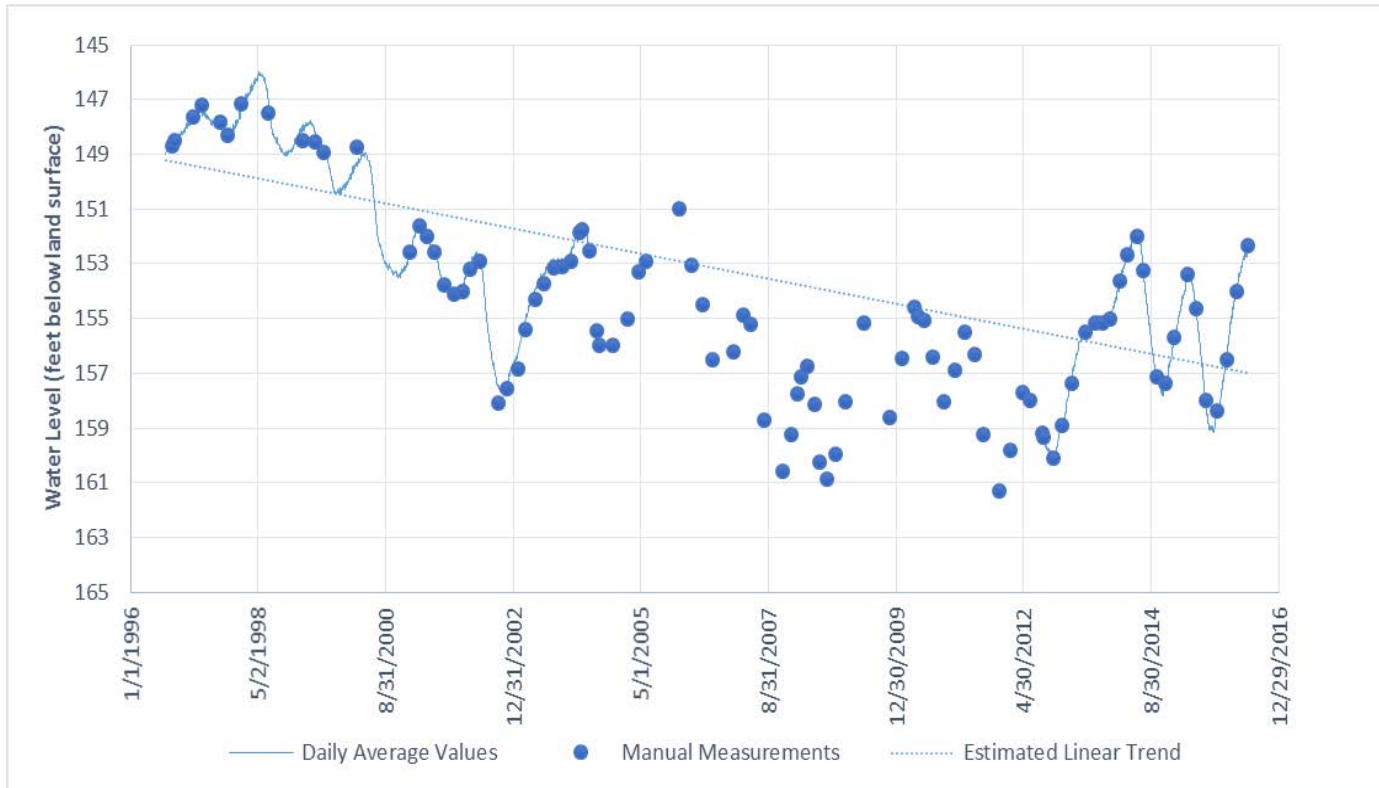
Barnwell County BRN-0352 Gordon Aquifer



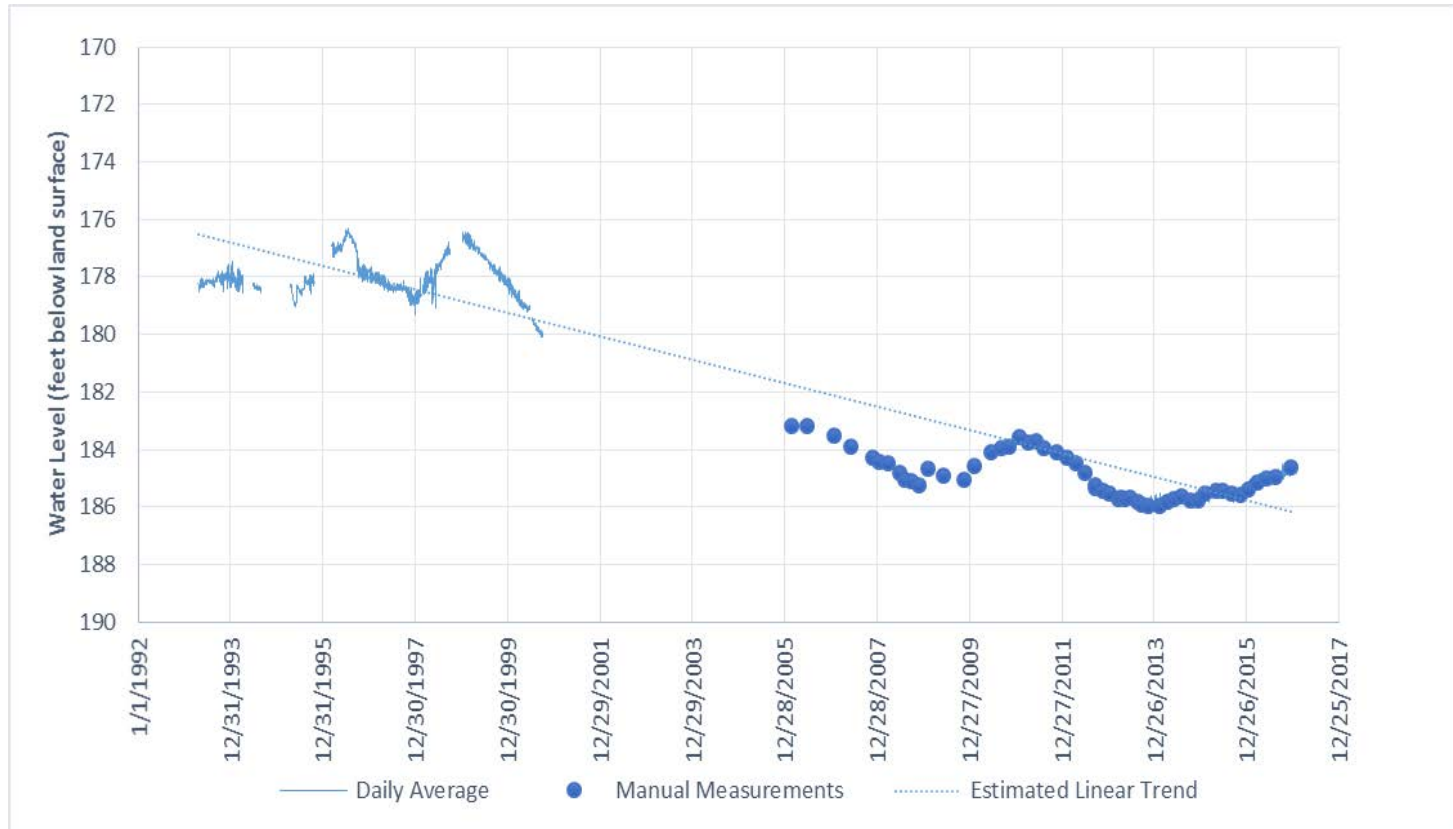
Orangeburg County ORG-0430 Gordon Aquifer



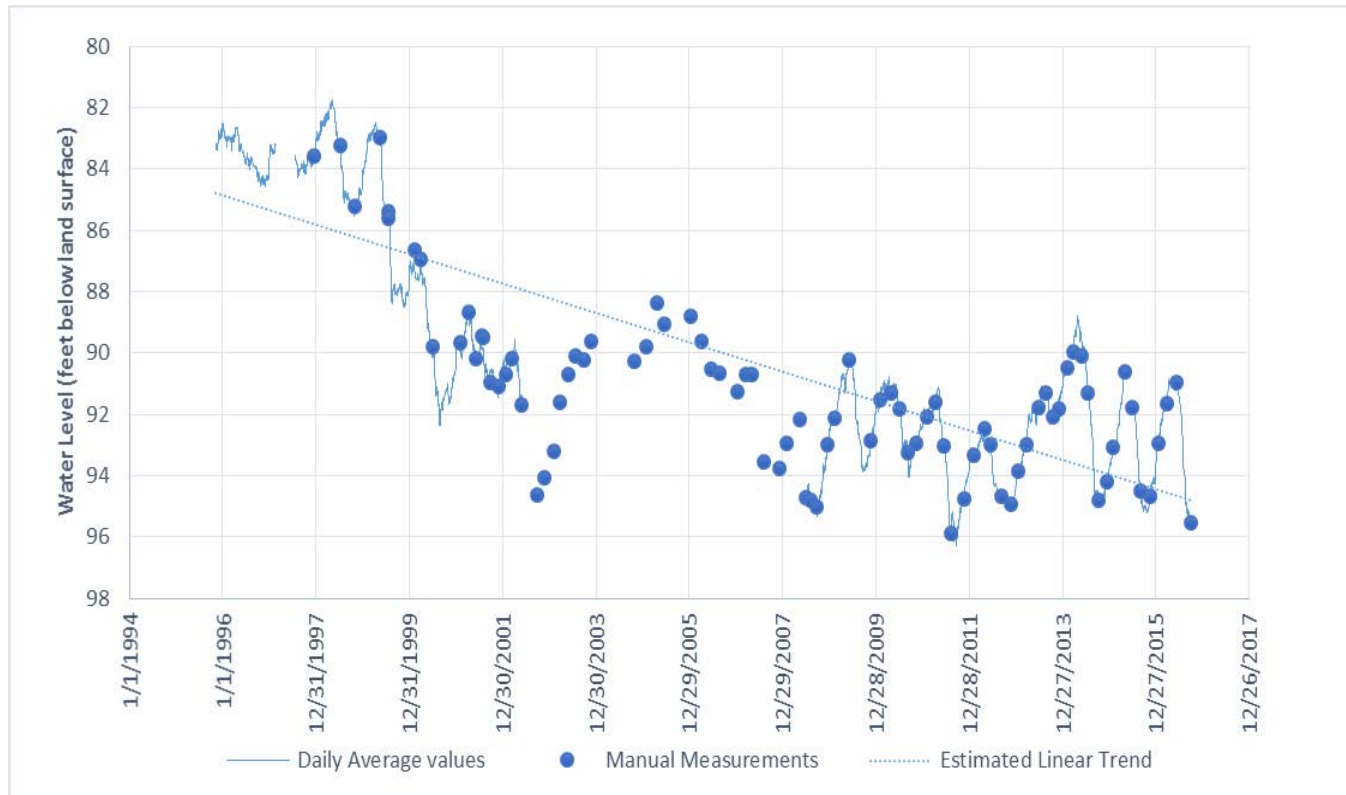
Allendale County ALL-0375, Gordon Aquifer



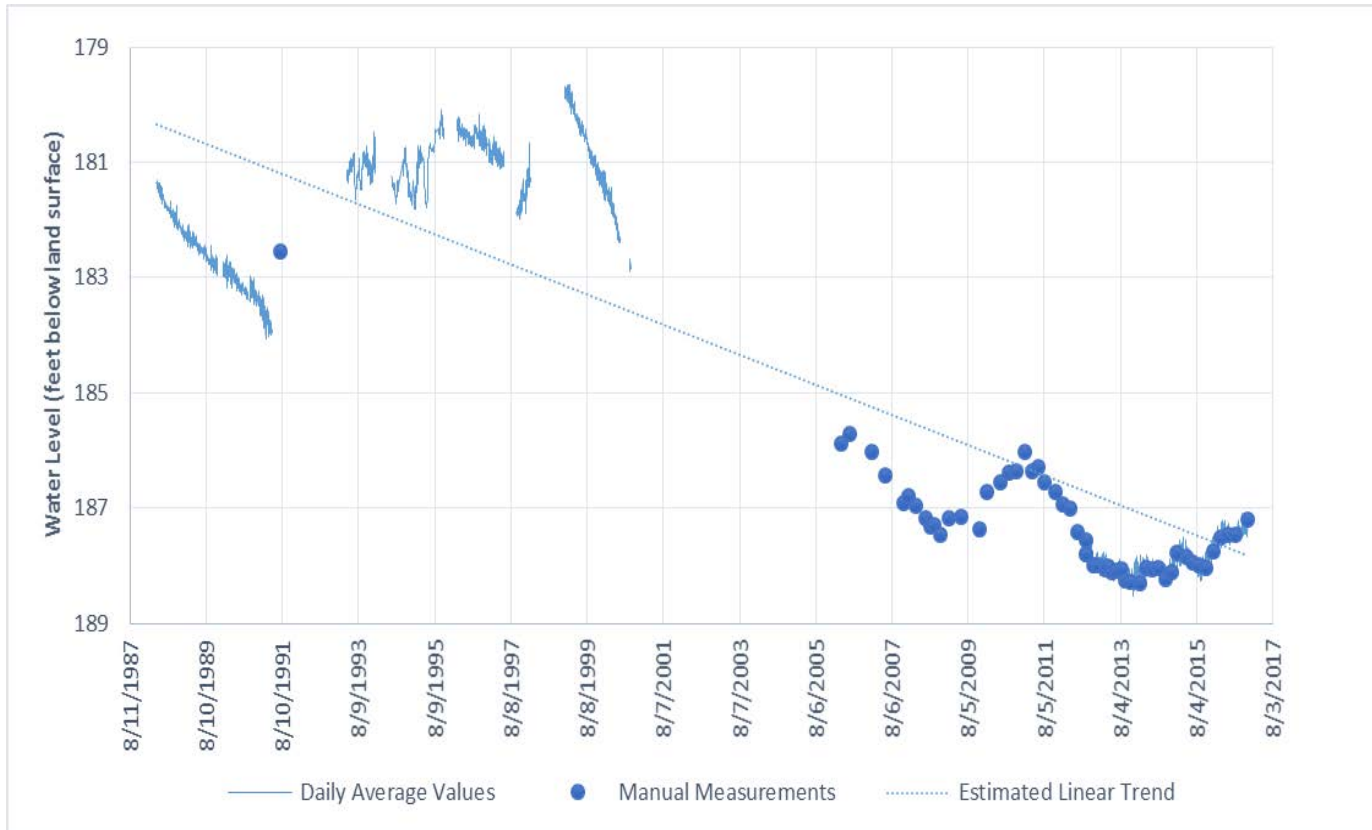
Aiken County AIK-0824 Crouch Branch Aquifer



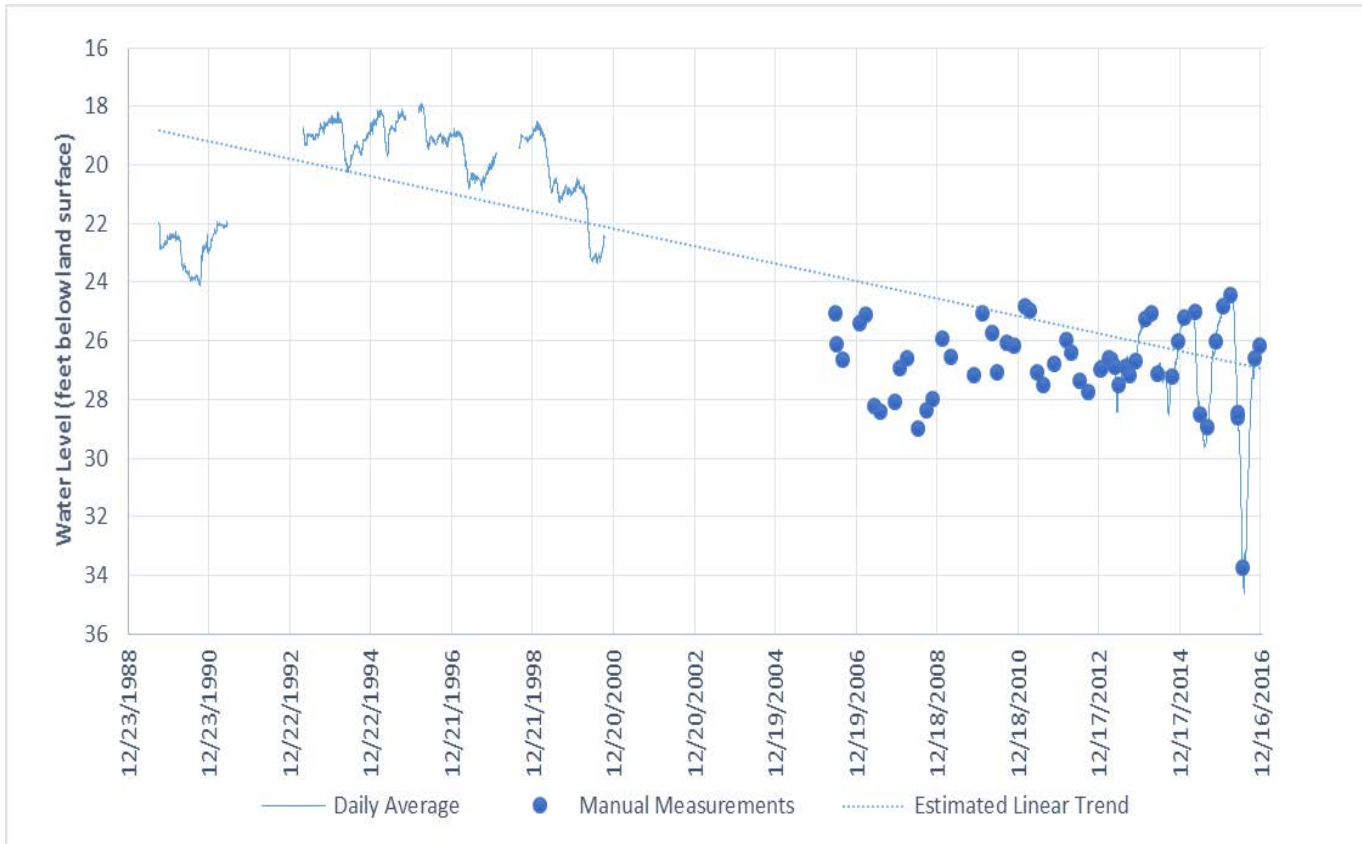
Allendale County All-0367, Crouch Branch Aquifer



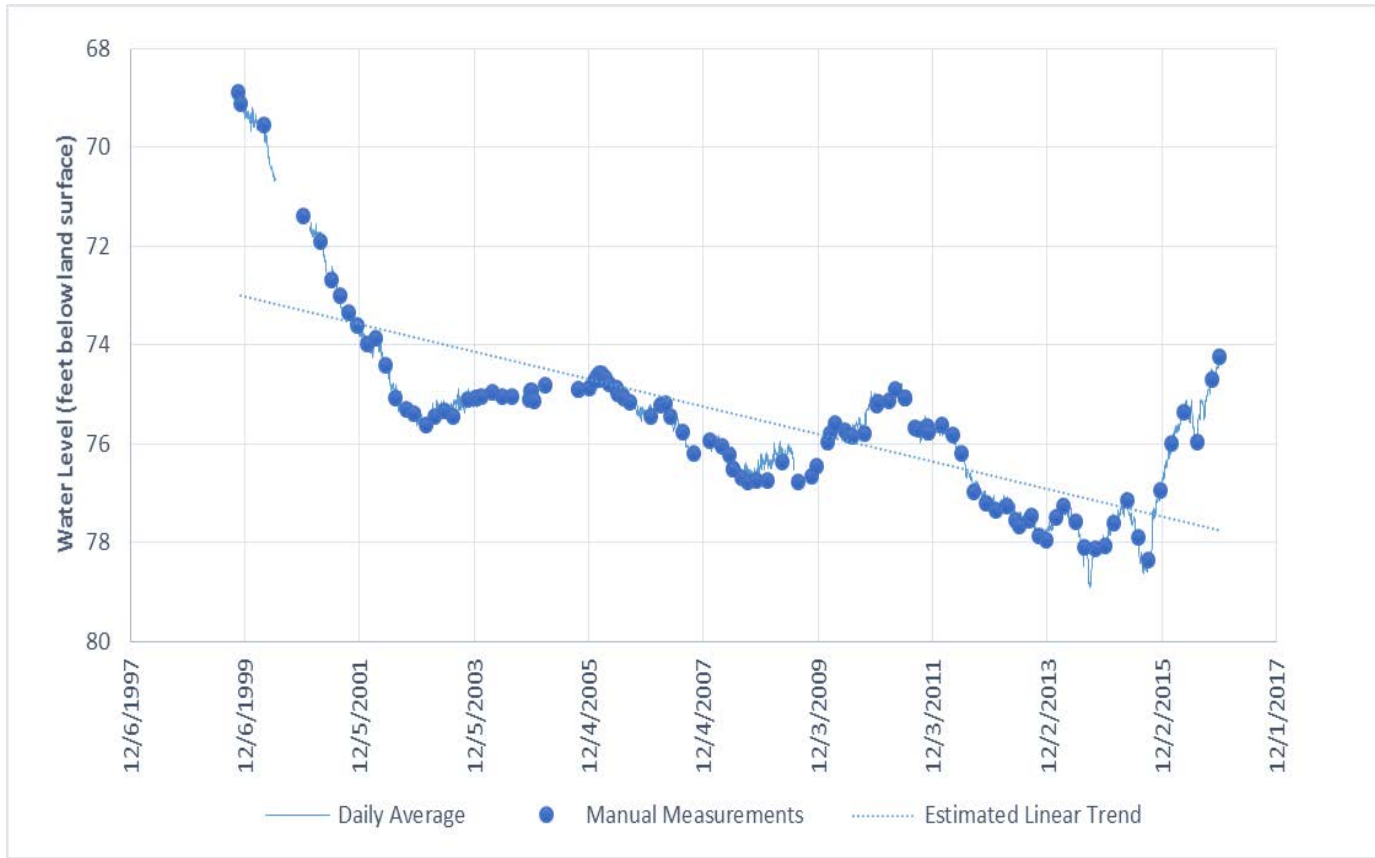
Aiken County AIK-0817, McQueen Branch Aquifer



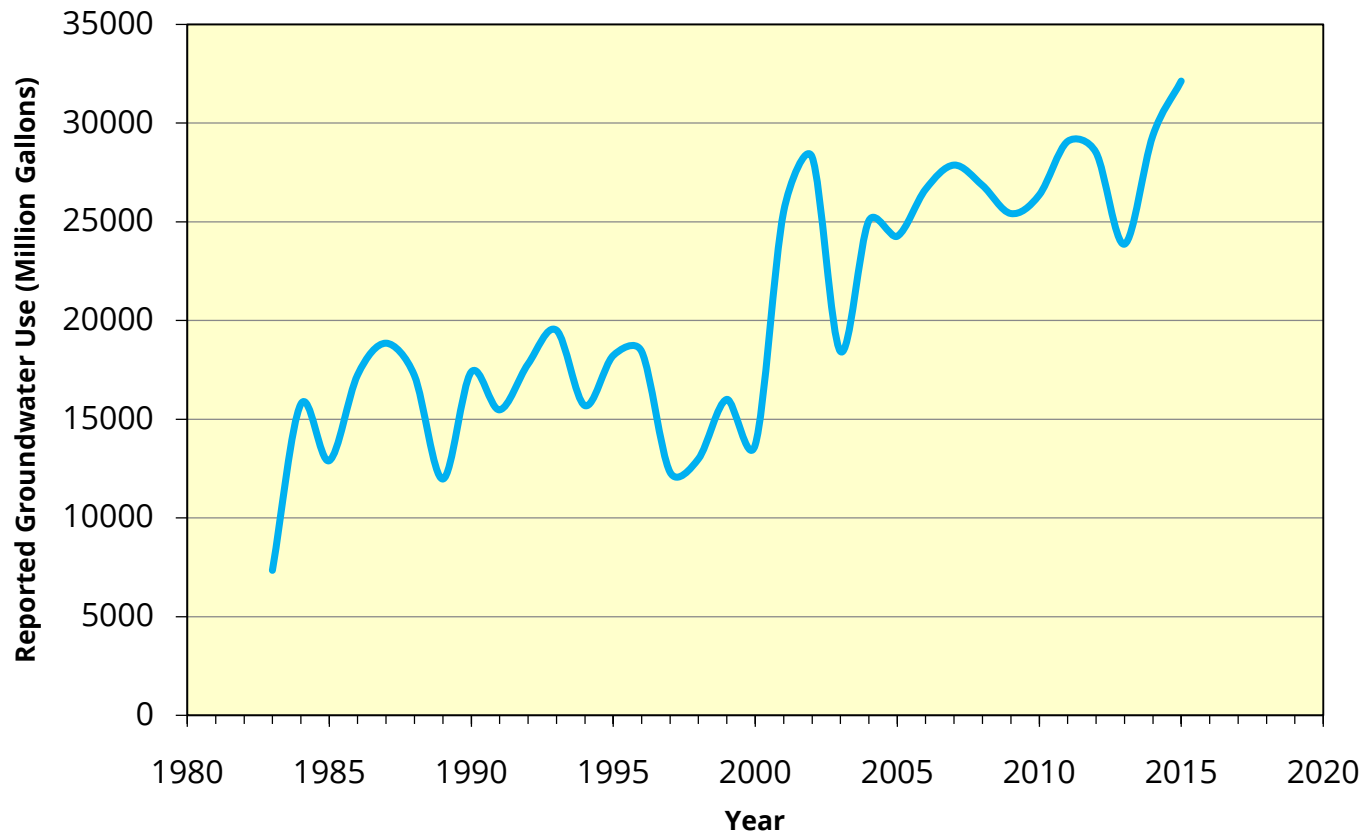
Aiken County AIK-0826, McQueen Branch Aquifer



Lexington County LEX-0844, McQueen Branch Aquifer



Reported Total Groundwater Use For Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties





Conclusion

Based on current water level data, and increasing demands for use of groundwater resources, Aiken County along with Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties utilize groundwater to the degree that coordination and regulation of groundwater supplies has become desirable and necessary per the *Groundwater Use and Reporting Act*



Next Steps

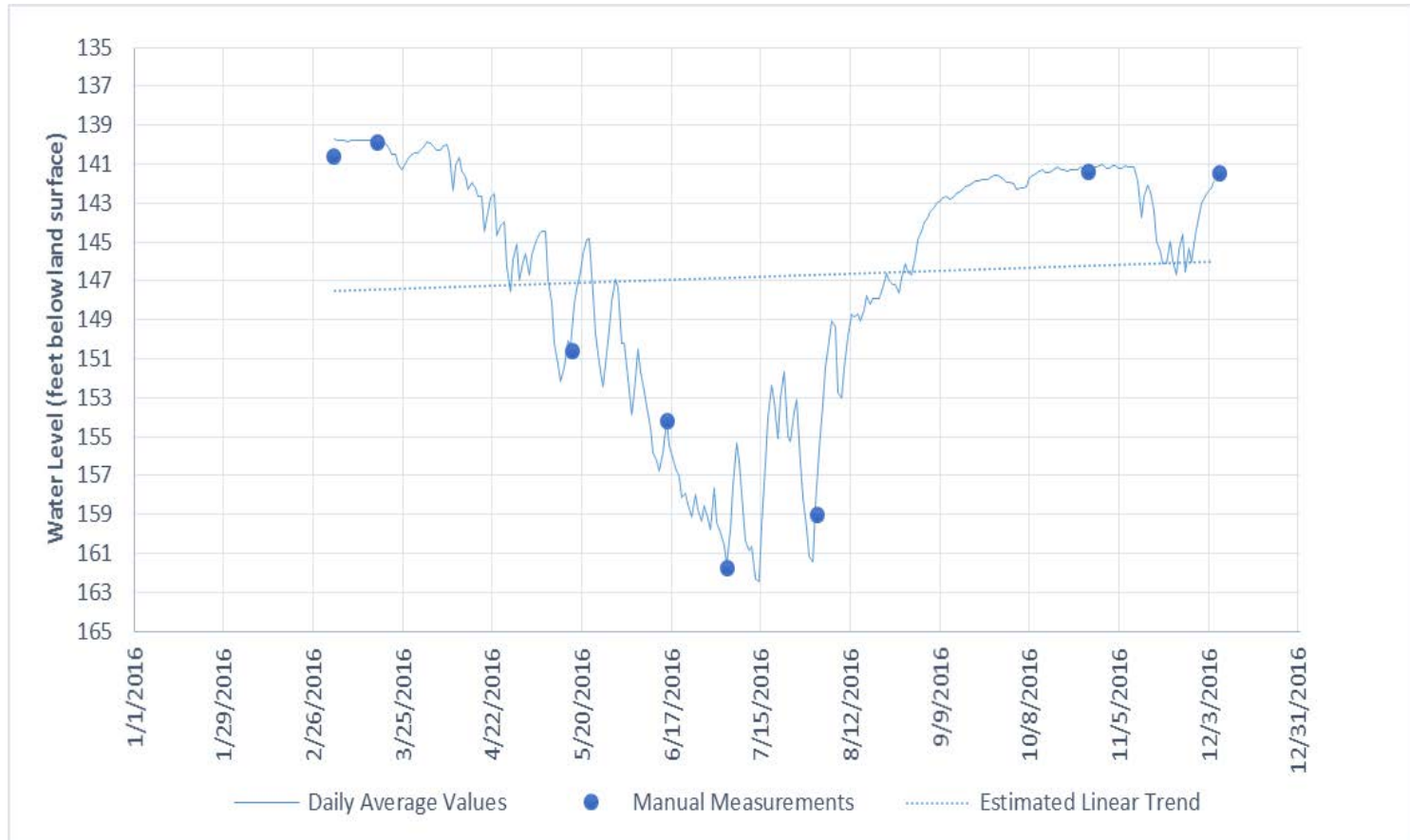
- Stakeholder meetings to gather input
- Public hearing
- Present to the DHEC Board in October 2017 for approval
- Upon approval, develop a Groundwater Management Plan to guide permitting decisions

Benjamin Franklin

“When the well is dry we know the value of water”



Aiken County AIK-0344, Crouch Branch Aquifer showing seasonal water level variation





Proposed Western Capacity Use Area



Contents

1. History of the Capacity Use Program
2. Proposed Western Capacity Use Area
 - a. Hydrogeologic Framework of Region
 - b. Why Now?
 - c. Trends
 - d. Current Registrations
3. Permitting Process
4. Conclusion
5. Next Steps



South Carolina Department of Health and Environmental Control
Healthy People. **Healthy Communities.**

History of the Capacity Use Program

Water Quantity Programs

- **Capacity Use Program**

- Since the 1970s
- Issue permits in designated areas of the coastal plain over 3 million gallons in any month (~100,000 gallons per day)

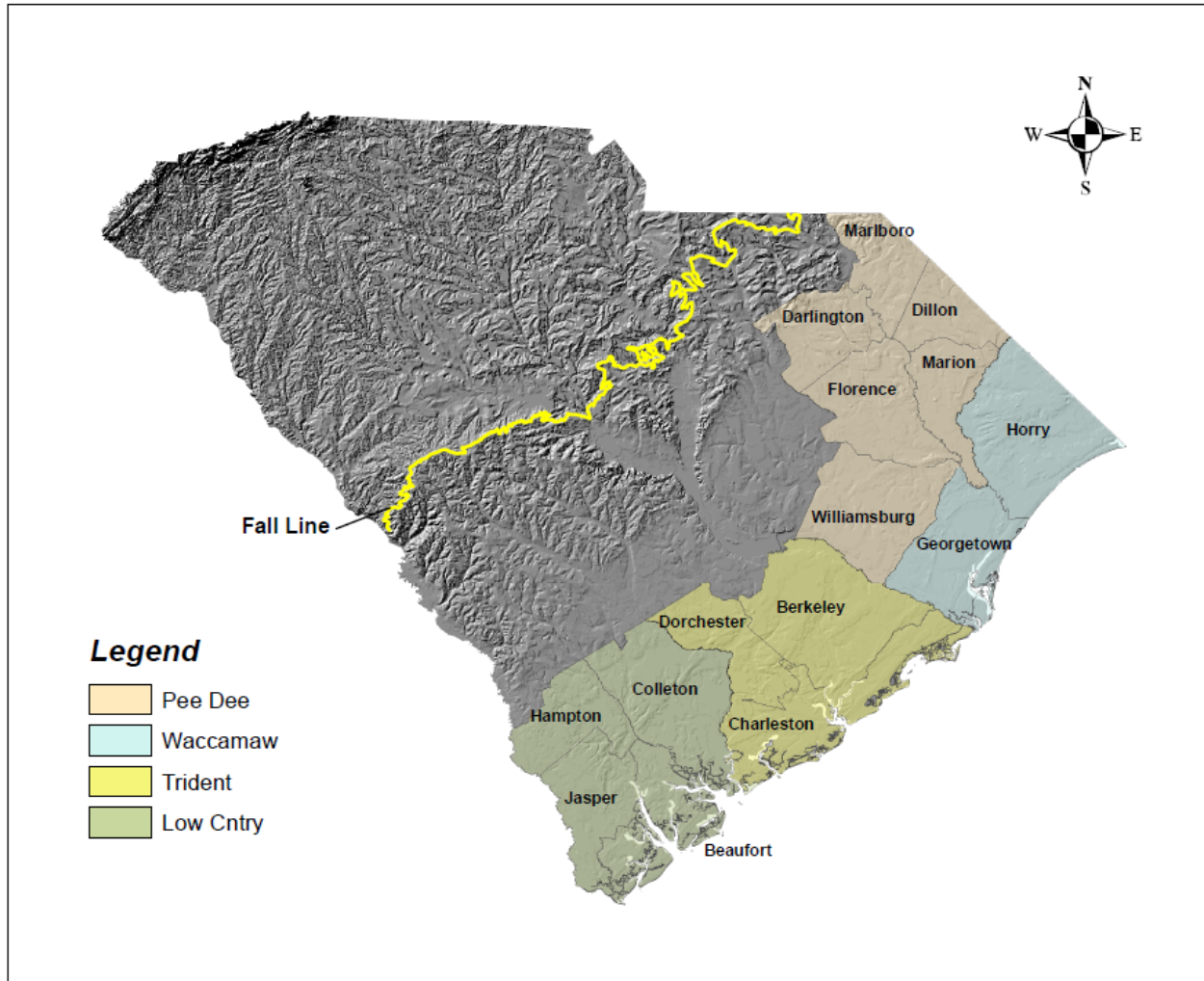
- **Surface Water Withdrawal Permitting**

- Since June 2012
- Issue permits statewide if over 3 million gallons in any month

- **Water Use Reporting**

- All registered and permitted groundwater and surface water withdrawers report their annual water use to the department
- We compile this information and produce water use reports, which are available on our website for public use

Current Capacity Use Areas





Capacity Use Area Declaration

- **Waccamaw - June 22, 1979**

- Georgetown County
- Horry County

- **Lowcountry - July 24, 1981**

- Beaufort County
- Colleton County
- Jasper County
- Hampton County (added in 2008)

- **Trident – August 8, 2002**

- Berkeley County
- Charleston County
- Dorchester County

- **Pee Dee – February 12, 2004**

- Darlington County
- Dillon County
- Florence County
- Marlboro County
- Marion County
- Williamsburg County

The Capacity Use Program Works

Trident Capacity Use Area

McQueen Branch Aquifer:

- Water-levels rebounded by more than **50 feet** in Berkeley and Charleston Counties
 - Comparing SCDNR 2001 Potentiometric Map to SCDNR 2014 Potentiometric Map
- Zones of concern have shrunk from region-wide deficits to localized pockets



The Capacity Use Program Works

Waccamaw Capacity Use Area

McQueen Branch Aquifer:

- Water-levels have rebounded over **50 feet** in Myrtle Beach, Horry County
 - Comparing SCNDR 2001 Potentiometric Map to SCDNR 2014 Potentiometric Map
- Water-levels have rebounded over **75 feet** throughout Georgetown County
 - Comparing SCNDR 2001 Potentiometric Map to SCDNR 2014 Potentiometric Map
- There is now **one** small pocket at-or-below mean sea-level in the entire Capacity Use Area

The Capacity Use Program Works

Why have we seen rebound?

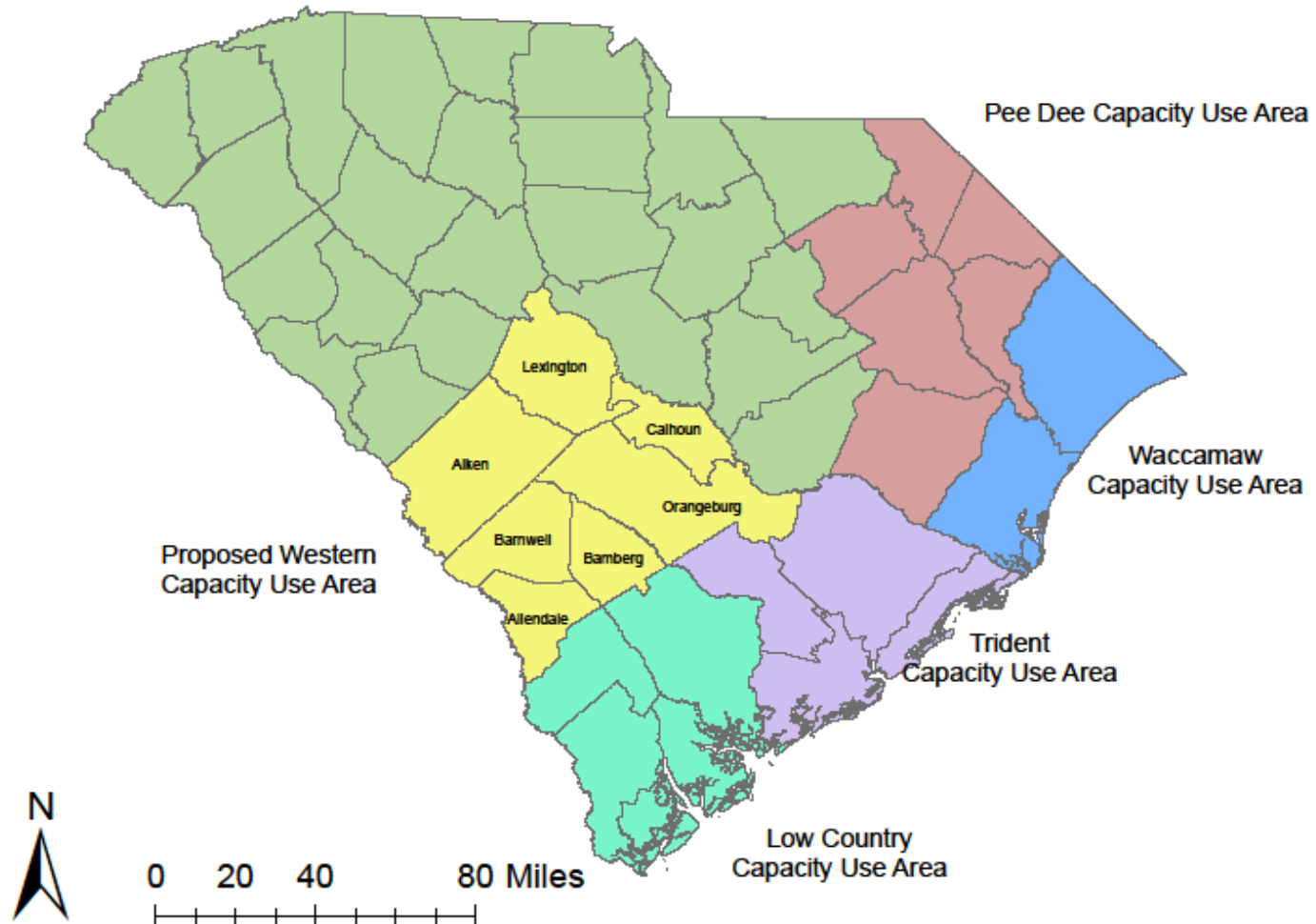
- Permitting Strategy
 - Allows us to monitor water use, new wells must be permitted: depths and aquifers can be controlled, ensure Best Management Practices are utilized
- Using Alternative Water Sources
 - Conjunctive uses of both surface water and groundwater, only utilizing surface water
- Raised Awareness about Water Conservation



South Carolina Department of Health and Environmental Control
Healthy People. **Healthy Communities.**

Proposed Western Capacity Use Area

South Carolina Proposed Western Capacity Use Area



Aquifers

- **Floridan/Gordon Aquifers**

- Approximately 150 to 400 feet thick

- **Crouch Branch Aquifer**

- Approximately 200 to 300 feet thick

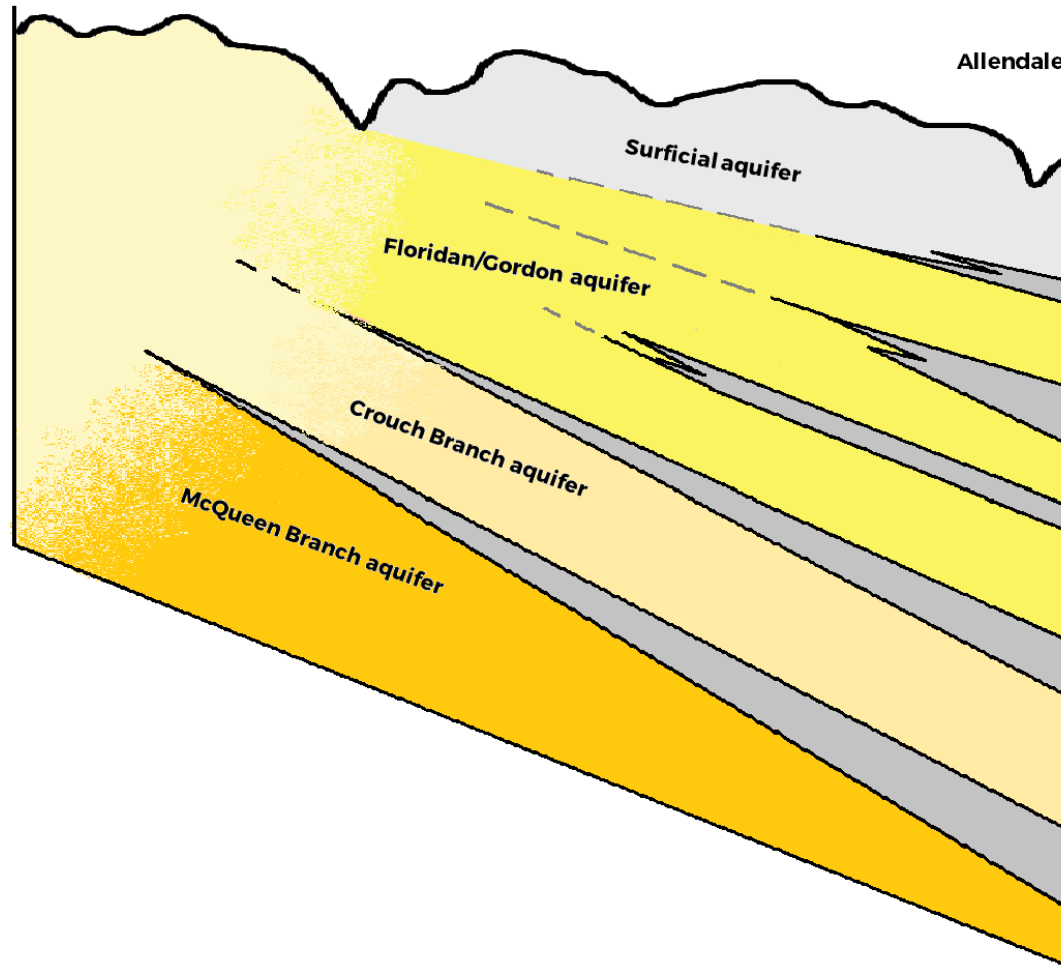
- **McQueen Branch Aquifer**

- Approximately 150 to 300 feet thick

Western Region Aquifers

Aiken County

Allendale County



Why is the Western Region being considered?

- Section 49-5-60 of the *Groundwater Use and Reporting Act*:
“where excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare, or where conditions pose a significant threat to the long-term integrity of a groundwater source...shall designate a capacity use area”
- A capacity use area must be designated by the board based on scientific studies and evaluation of resources and may, or may not, conform to political boundaries

Why is the Western Region being considered?

Estimated declines in groundwater levels as follows:

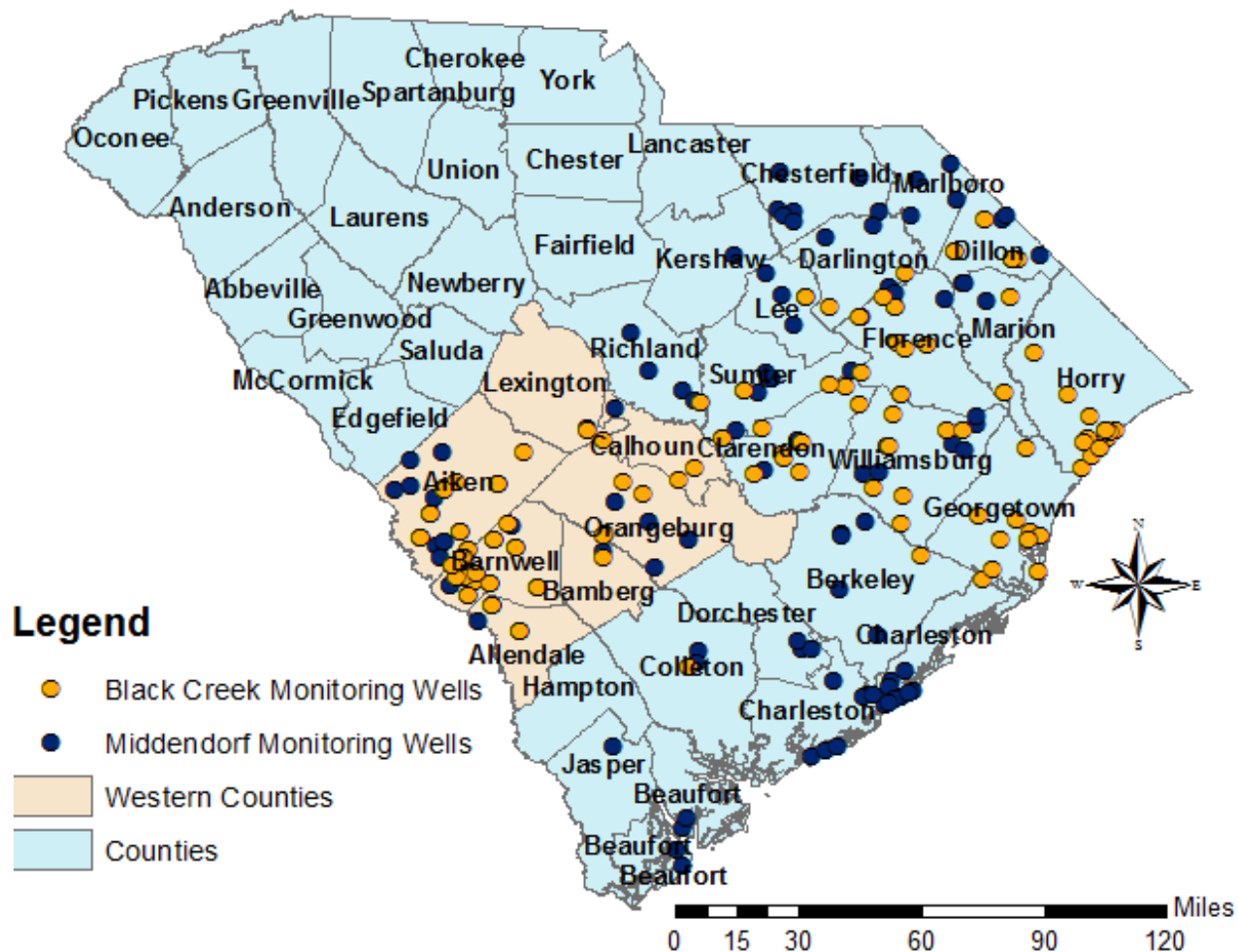
- Floridan/Gordon Aquifers (since 1998):
 - Allendale County: 8 feet
 - Barnwell County: 8 feet
- Crouch Branch Aquifer (since 2001):
 - Aiken County: 5 feet
 - Allendale County: 5 feet
 - Barnwell County: 5 feet
 - Lexington County: 5 feet
 - Bamberg County: 10 feet
 - Calhoun County: 12 feet
 - Orangeburg County: 12 feet

Why is the Western Region being considered?

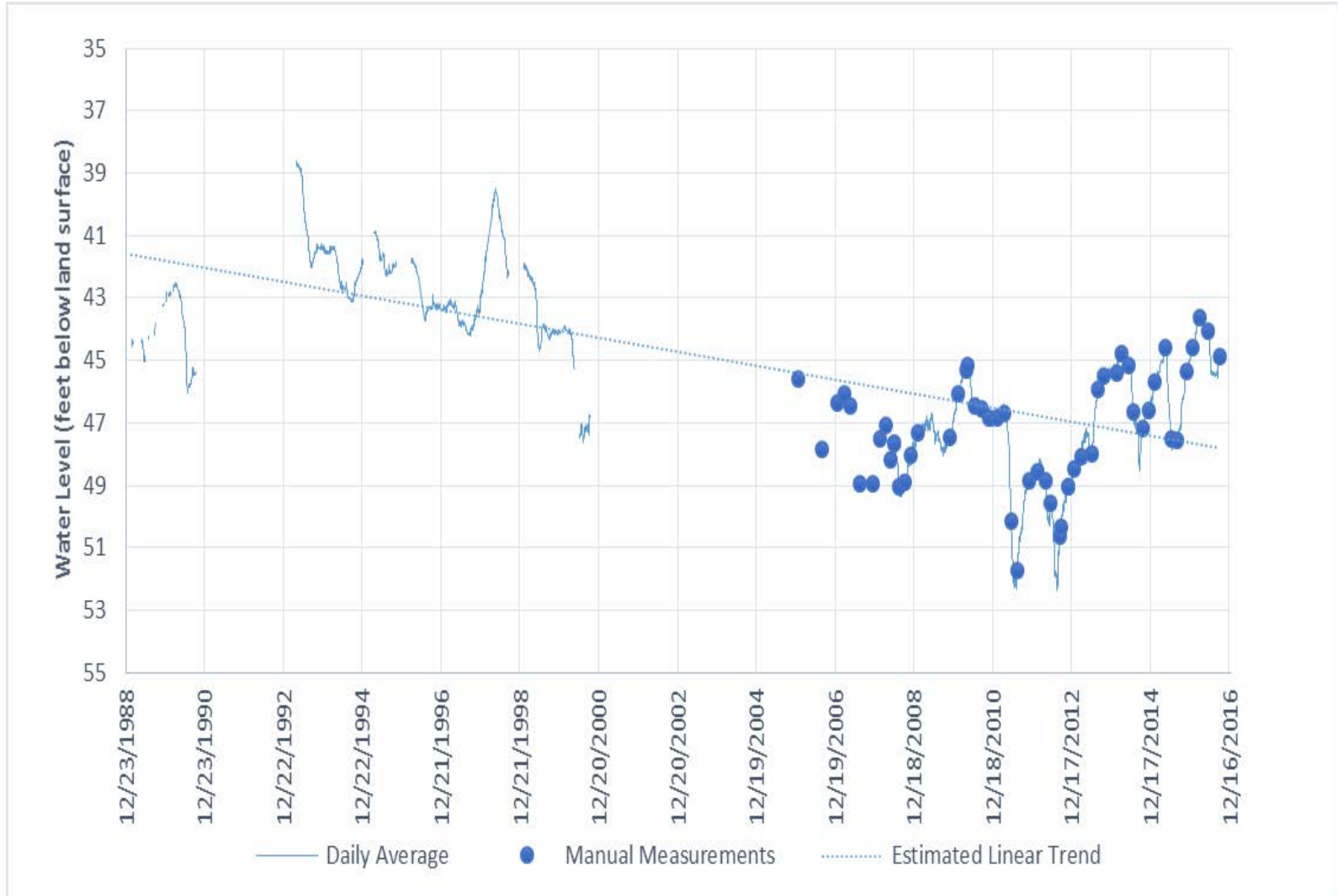
Estimated declines in groundwater levels as follows:

- McQueen Branch Aquifer (since 2001):
 - Aiken County: 5 feet
 - Barnwell County: 10 feet
 - Lexington County: 10 feet
 - Allendale County: 12 feet
 - Bamberg County: 15 feet
 - Calhoun County: 15 feet
 - Orangeburg County: 15 feet

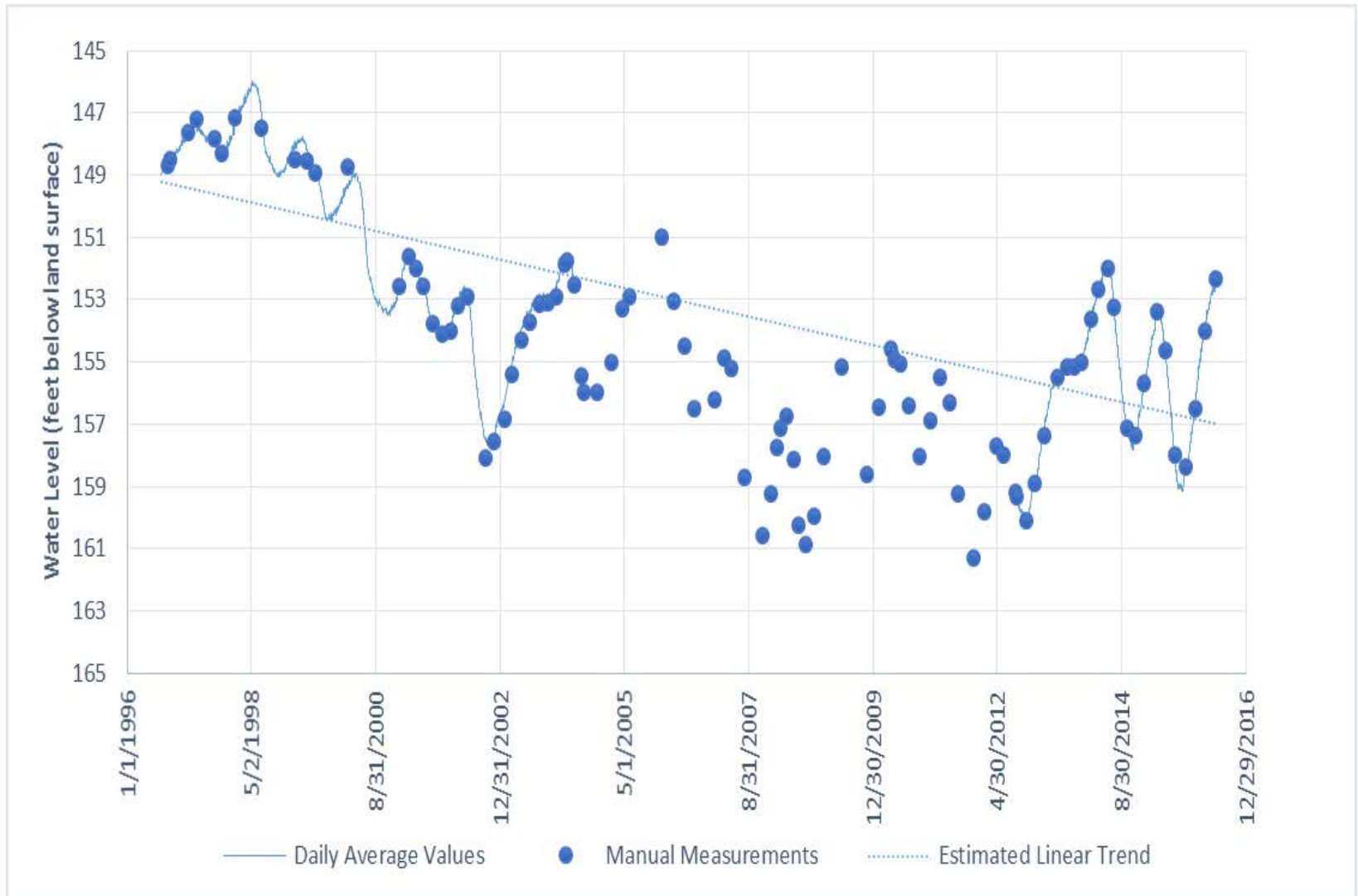
Groundwater-Level Monitoring Network



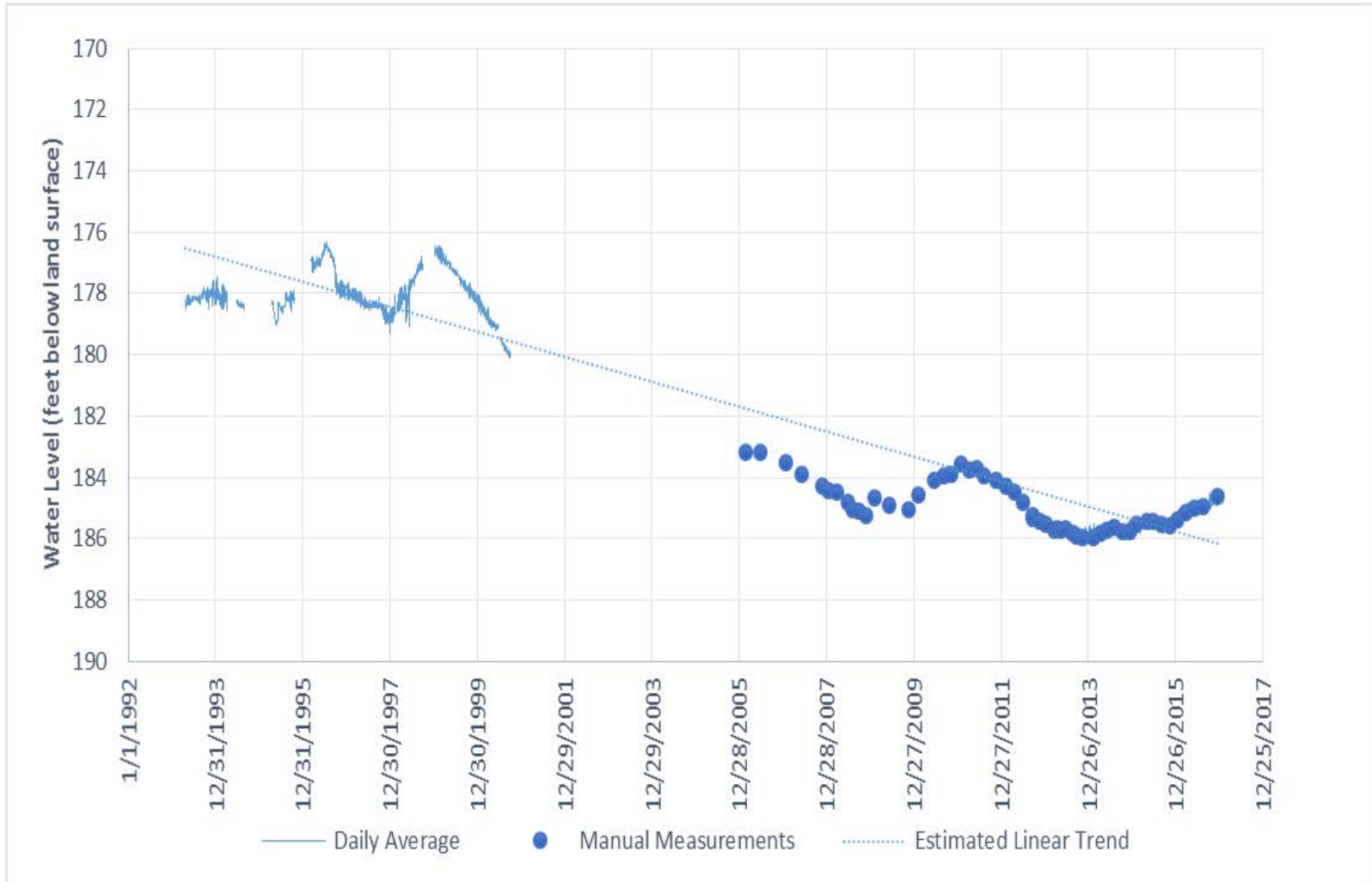
Barnwell County BRN-0352 Gordon Aquifer



Allendale County ALL-0375, Gordon Aquifer

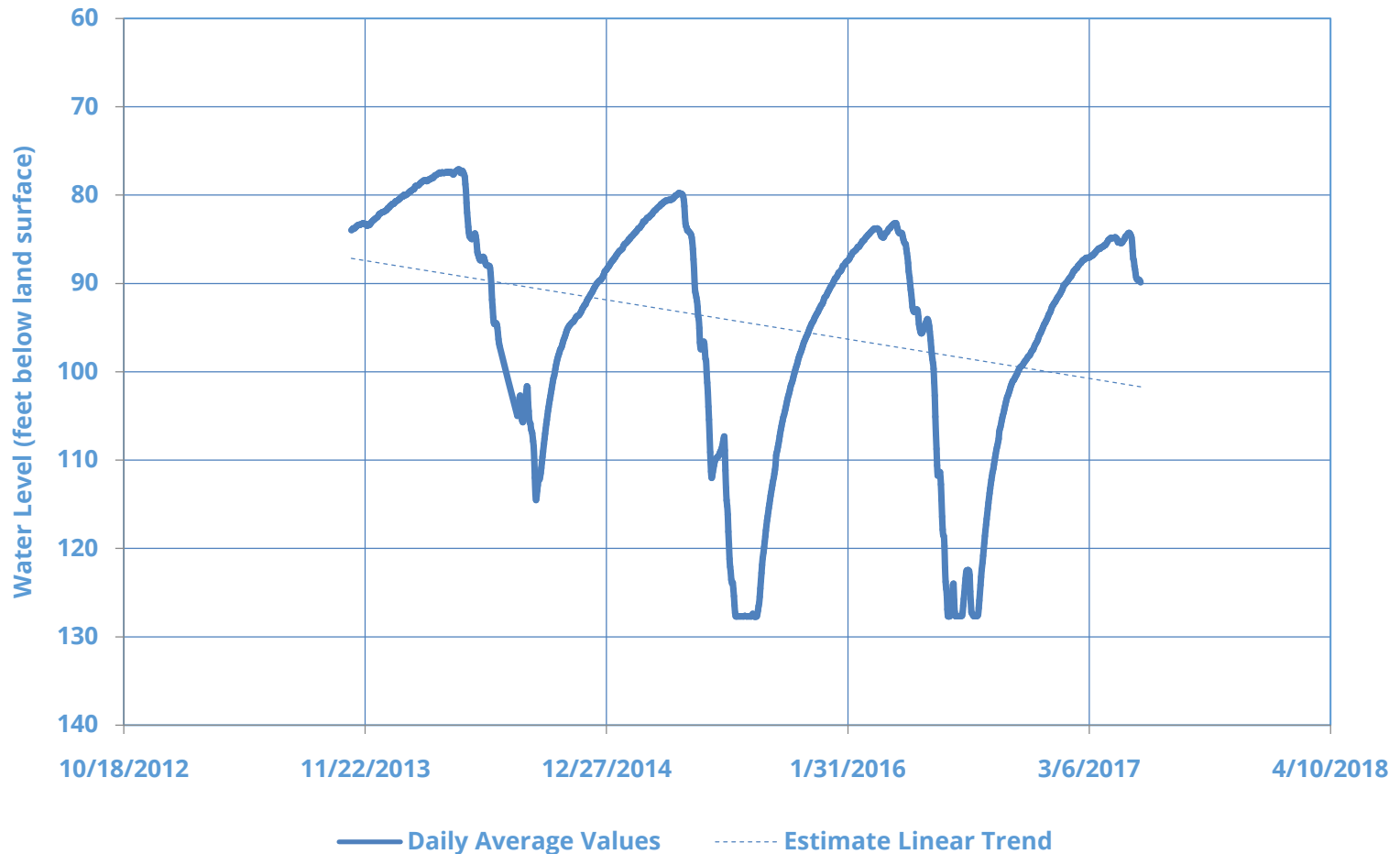


Aiken County AIK-0824 Crouch Branch Aquifer

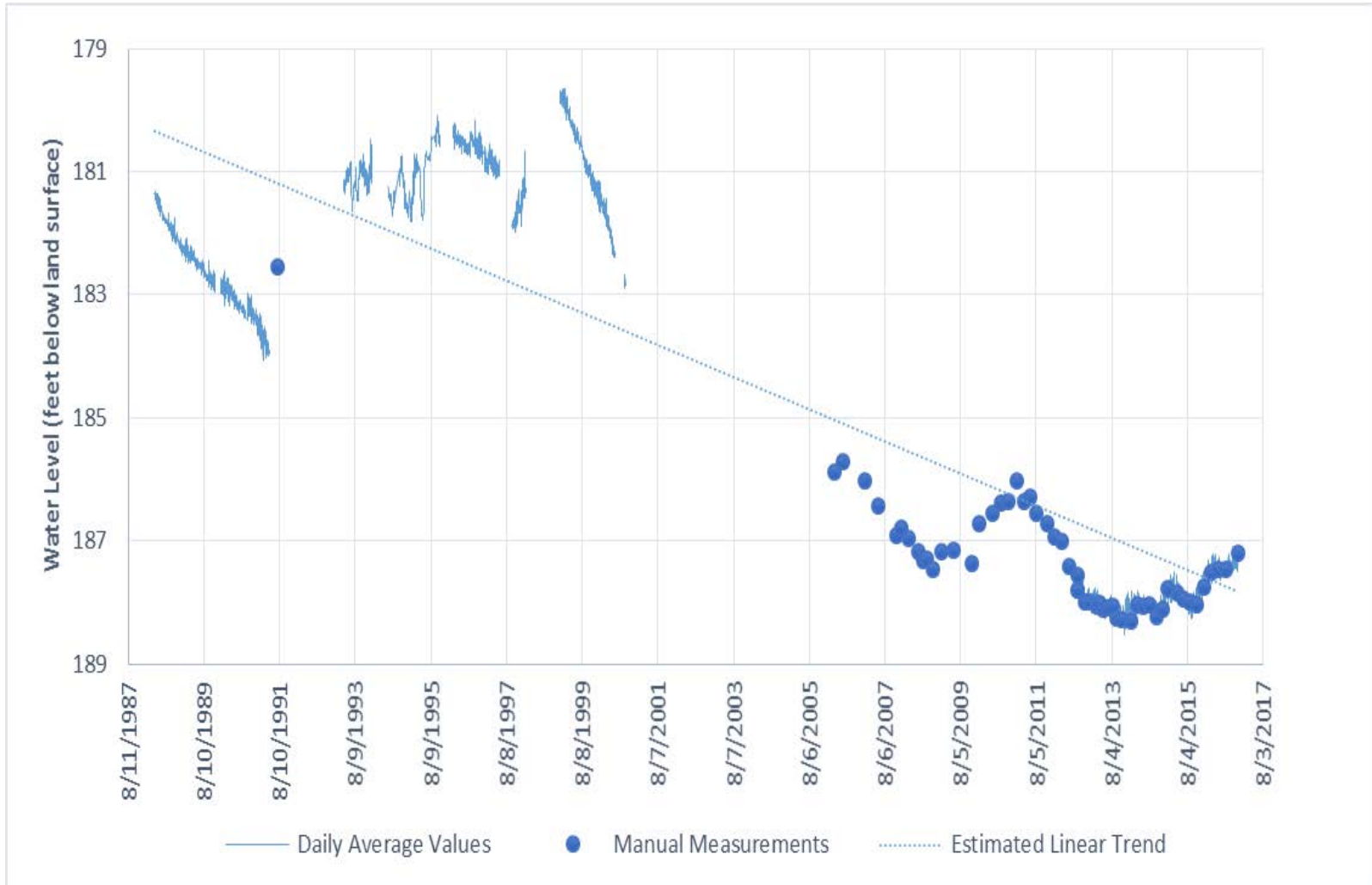




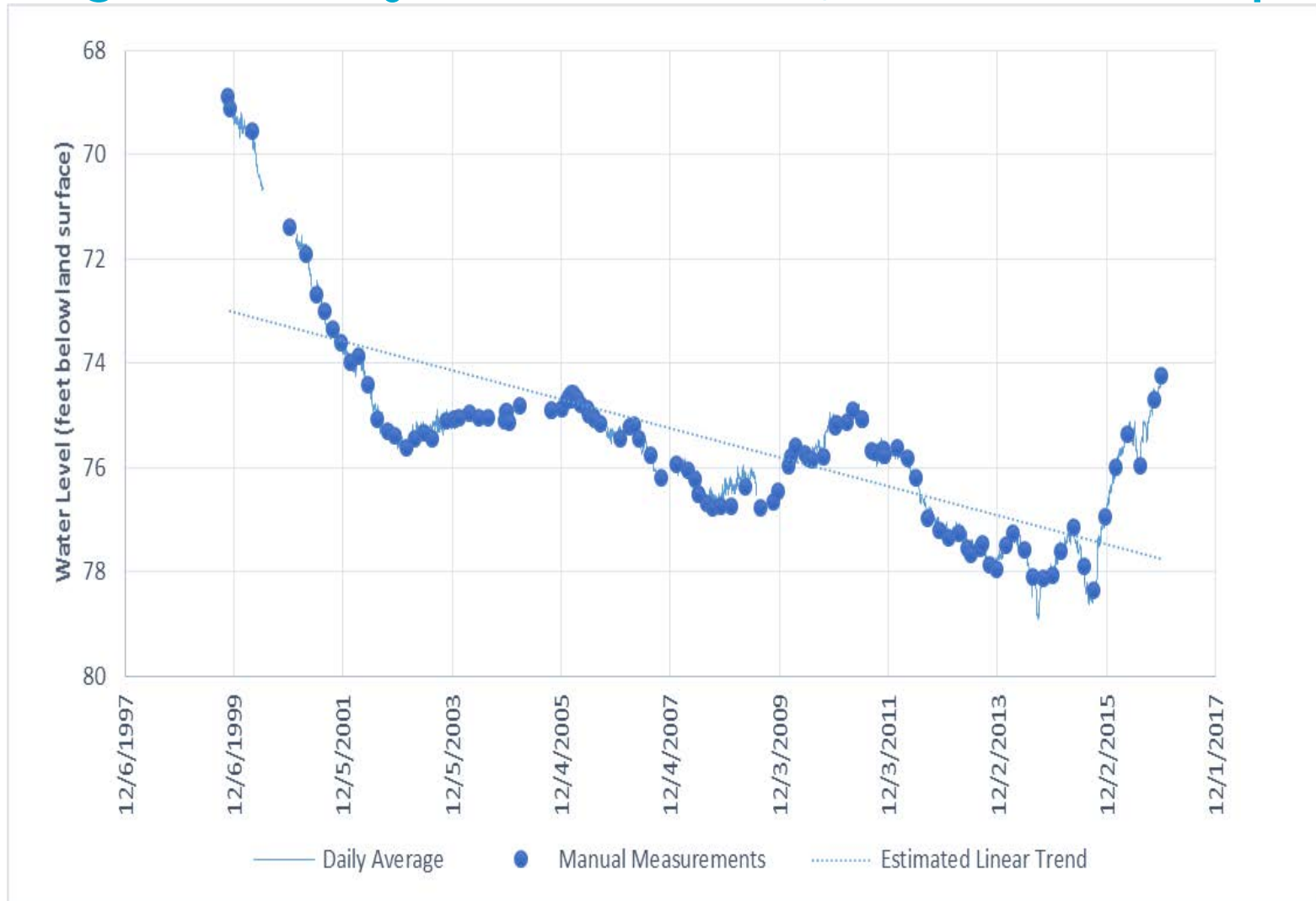
Calhoun County CAL-0195, Crouch Branch Aquifer



Aiken County AIK-0817, McQueen Branch Aquifer



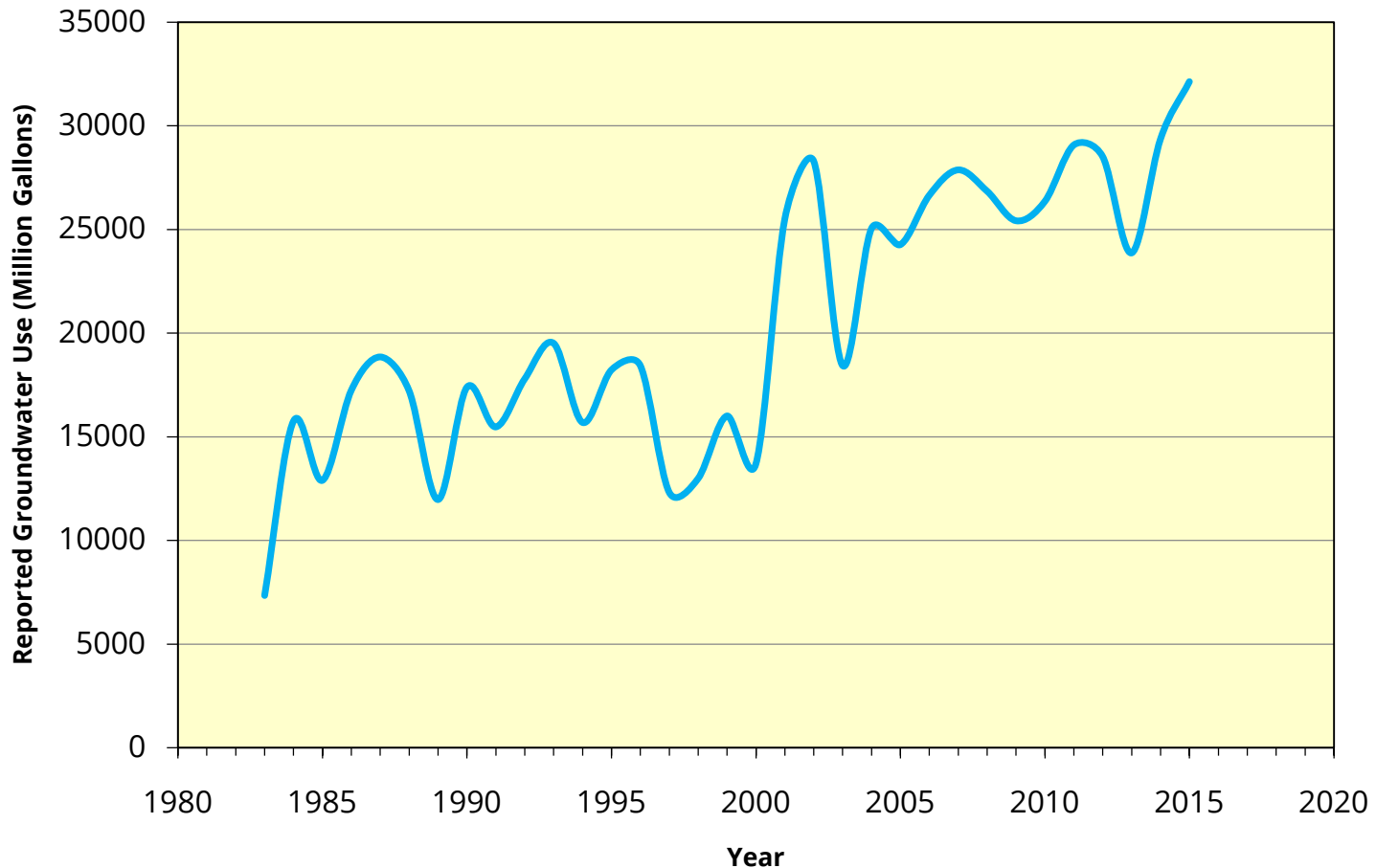
Lexington County LEX-0844, McQueen Branch Aquifer



Why Now?

- The SC Department of Natural Resources (DNR) recommended in the 2004 South Carolina Water Plan that the entire Coastal Plain be designated as a Capacity Use Area
- Long-term trends in groundwater levels indicate sustained declines in depth to groundwater
- Better to plan and manage withdrawals now rather than react to a crisis later

Reported Total Groundwater Use For Western Region



Groundwater Level Trends

- From the 1990s to present day there have been water-level declines.
 - Declines mimic water-level declines in other Capacity Use Areas when evaluated as a percentage of the aquifer thickness
- Crouch Branch Aquifer has declines of ~10% from the top of the aquifer
 - Measured in Orangeburg County, since 2001
- McQueen Branch Aquifer has declines of 5% from the top of the aquifer
 - Measured in Aiken County, since 2001
- Prior to its designation, the Trident Capacity Use Area saw declines of ~10% from the top of the McQueen Branch Aquifer
 - Since its designation declines have improved to ~4.7% from the top of the aquifer



Current Number of Groundwater Registration in the Proposed Western Capacity Use Area								
Type Use	AIKEN	ALLENDALE	BAMBERG	BARNWELL	CALHOUN	LEXINGTON	ORANGEBURG	Totals By Type Use
Golf Courses	3	-	-	-	1	1	3	8
Industries	9	1	-	-	1	2	3	16
Irrigation	17	13	21	19	32	16	46	164
Mining	-	-	-	-	-	3	1	4
Power Thermal	-	1	-	-	-	-	1	2
Public Water Supply	21	5	4	4	3	3	10	50
Totals By County	50	20	25	23	37	25	64	
Total Number of Registrations								244



Current Number of Groundwater Registrations in the Proposed Western Capacity Use Area	
County	Number of Registrations
AIKEN	50
ALLENDALE	20
BAMBERG	25
BARNWELL	23
CALHOUN	37
LEXINGTON	25
ORANGEBURG	64
Total	244



South Carolina Department of Health and Environmental Control
Healthy People. **Healthy Communities.**

Permitting Process

Goals of Capacity Use Permitting

1. Maximize the use of the resource while preventing harm to aquifers or other users
2. Mitigate current groundwater issues
3. Establish a basis for reasonable use
 - Based upon type of use
 - Uses industry standards to establish withdrawal limits
4. Groundwater Use Equality
 - There is no prioritization of use → one type of use is not preferential above another

Permitting Process

Who needs a Permit?

- Anyone in a designated Capacity Use Area who withdraws **>3 million gallons** of water in any given month
- Currently, those withdrawing >3 million gallons in a month ***should*** be registered and reporting water use in the Western Region
 - All that are already registered in the Western Area will be issued a permit upon designation

Permitting Process

1. An application is submitted to the Department by groundwater withdrawer
2. Department reviews application for completeness
3. Department performs a technical review of permit
4. All new and modified permits are Public Noticed
5. A Permit to Construct is issued if new wells are requested to be installed
 - Is not a Permit to Withdraw, only authorized construction of the well(s)
6. Permit to Withdraw is issued
 - If a new well was installed, the Department requires a Well Driller's Log prior to issuance of a permit



Permitting Process

- There is no fee associated with a Groundwater Withdrawal Permit
- Application submission → Withdrawal Permit takes about 60 -90 days
- The Trident Capacity Use Area developed a Technical Advisory Committee to review applications and give comments after the passing of the Groundwater Management Plan
 - Western Area will have the same opportunity to form Committee, if desired



Benefits of Capacity Use Permitting

- Investigate complaints of shallow (home) wells being impacted
- Can locate new wells in areas that will support their water needs, provides more certainty for economic development
- Permitting prevents new permittees from affecting current users
- Permits require best management practices, conservation, and efficiency
- Pro-active measures to ensure sustainability, minimizing the risk of dramatic reductions to solve problems later

Conclusion

Based on current water-level data, and increasing demands for use of groundwater resources, Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties utilize groundwater to the degree that coordination and regulation of groundwater supplies has become desirable and necessary per the *Groundwater Use and Reporting Act*.

Next Steps

1. Public hearing to receive comments on the Western Capacity Use Designation
2. Present to the DHEC Board for approval
3. Upon approval, develop a Groundwater Management Plan to guide permitting decisions



Contact

Robert Devlin, Director

devlinrj@dhec.sc.gov

(803) 898-3798

Alex Butler, Manager

butlerap@dhec.sc.gov

(803) 898-3575

UserID	Facility
02GC002	HOUNDSLAKE COUNTRY CLUB
02GC004	MIDLAND VALLEY COUNTRY CLUB
02GC009	NORTH AUGUSTA COUNTRY CLUB
02GC010	WOODSIDE GOLF LLC HOLLOW CREEK GC
02GC011	CEDAR CREEK GOLF CLUB
02GC051	Hollow Creek Course at Woodside Plantation
02GC052	Woodside Golf LLC / DBA The Reserve Club
02IN001	AVONDALE MILLS INC GRANITEVILLE FABRICS
02IN003	Kimberly Clark Corporation Beech Island Mill
02IN005	J M HUBER CORP EDISTO PLANT
02IN007	WESTINGHOUSE SRS N AREA CENTRAL SHOPS
02IN008	ALLNEX USA - LANGLEY PLANT
02IN009	WEYERHAEUSER CO QUAIL RIDGE NURSERY
02IN012	SRNS SRS A Area Ind
02IN013	WESTINGHOUSE SRS F AREA IND
02IN014	SRNS FORESTRY
02IN015	SRNS SRS H AREA IND
02IN016	WESTINGHOUSE SRS L AREA IND
02IN017	SRNS SRS S AREA IND
02IN018	SRNS SRS T AREA IND
02IN020	US DOE/WSRC CMP PITS
02IN021	Bridgestone Americas, Inc./BATO Aiken Plant
02IN022	Savannah River Site-Saltstone Disposal Facility
02IN023	WSP/ASCO Valve Manufacturing, LLC
02IR004	FINN FARMS
02IR011	Watson Jerrold A. & Sons
02IR015	EDISTO TURF FARMS
02IR019	WEYERHAEUSER CO QUAIL RIDGE NURSERY
02IR025	Walthers Farms
02IR026	Rucker Farms
02IR027	Pebble Creek Enterprises
02IR029	BC Farms, Inc./Cameron Tract
02IR031	BC Farms, Inc./Salley Tract
02IR032	LALA
02IR033	Larke Farm
02IR034	Goldens Poultry Farm
02IR035	Steven Douglas Farm
02IR036	Tommy Douglas Farm
02IR037	J. Wiles Farm
02IR039	Windsor Park, LLC
02IR040	Brown's Bottom Farm
02IR041	Stockhaven Nursery LLC
02IR042	BC Farms, Inc. - Pearl Bonnet Tract
02IR043	BC Farms, Inc. - Bussey Tract
02MI002	MARTIN MARIETTA AGGR AIKEN QUARRY
02WS001	Wagener (Town)
02WS002	AIKEN CITY OF
02WS003	TALATHA RURAL COMMUNITY WATER DISTRICT
02WS004	Bath Water & Sewer District
02WS005	BREEZY HILL W/D
02WS006	VALLEY PSA

02WS007 NORTH AUGUSTA CITY OF
02WS008 Beech Island Rural Community W&SD
02WS009 LANGLEY W/D
02WS011 MONTMORENCI W/D
02WS012 JACKSON TOWN OF
02WS013 BURNETTOWN TOWN OF
02WS014 NEW ELLENTON CPW
02WS015 SALLEY TOWN OF
02WS016 PERRY TOWN OF
02WS017 MONETTA TOWN OF
02WS018 COLLEGE ACRES PUBLIC W/D
02WS019 NEW HOLLAND W/D
02WS020 SRNS A AREA WS
02WS021 SRNS SRS B AREA WS
02WS022 WESTINGHOUSE SRS D AREA WS
02WS023 SRNS SRS G AREA MISC WS
02WS024 WESTINGHOUSE SRS K AREA WS
02WS025 WEYERHAEUSER CO QUAIL RIDGE NURSERY
02WS026 B & B WATER COMPANY
02WS027 MONTMORENCI W/D OAKWOOD SCHOOL
02WS028 Trolley Run Station Development
03IN001 ARCHROMA MARTIN PLANT
03IN002 WHITLOCK COMBING COMPANY INC
03IR001 EMMETT ROUSE FARM ALLENDALE
03IR002 CHAPPELL FARMS
03IR003 RUSSELL RONALD FARMS
03IR004 COOSAW FARMS
03IR005 J&J Farms of Estill, SC Inc.
03IR006 SHARP & SHARP CERTIFIED SEED
03IR007 SUGAR HILL
03IR008 DUNCAN FARMS
03IR009 MORRIS W S CREEK PLANTATION
03IR010 JCO Farms
03IR011 Connelly Farms
03IR012 GROTON LAND COMPANY INC
03IR013 TI AUN PLANTATIONS
03IR051 Allendale Peanut Farms, LLC
03IR052 Corrin F. Bowers & Son
03IR053 Coosaw Ag, LLC
03IR054 Clemson - Edisto Research/ Education Center
03PT001 Allendale Biomass, LLC
03WS001 ALLENDALE TOWN OF
03WS002 FAIRFAX TOWN OF
03WS003 ULMER TOWN OF
03WS004 ALLENDALE IND PK
03WS005 Georgia Pacific Allendale, LLC
05GC002 PAW PAW COUNTRY CLUB
05IR004 HOME FARM
05IR005 SHIVERS TRADING AND OPERATING COMPANY
05IR006 HEATWOLE FARM INC
05IR007 BRUBAKER FARMS INC
05IR008 ATLANTIC HITCH COMPANY HOLLAND

05IR010 SHILLY ACRES
05IR012 PHIL SANDIFER & SONS, LLC
05IR014 GIBSONS FARM
05IR017 GEDDINGS & WISE FARM
05IR018 BOYD JOHN FARM
05IR020 Platt Farm
05IR021 PHIL SANDIFER & SONS, LLC
05IR023 Gary Hege Farm
05IR024 LANCASTER LAND
05IR025 Danny Hege Farm
05IR033 DIEM DELMAR FARM
05IR037 SHIVERS TRADING AND OPERATING COMPANY
05IR051 FRIERSON NURSERY
05IR052 TRIPLE R FARMS
05IR053 LAURIE W COPELAND FARMS
05IR055 Dave Anderson Farm
05IR056 JWB Farming
05IR057 Double B Farms
05IR058 Waltz Farms
05IR059 Old Salem Dairy LLC
05IR060 Federated Farms
05IR061 Sease Family Partnership
05IR062 Travis Still Farms
05IR063 Newlife Turf Farms Inc.
05IR064 Andrew Carter
05IR065 Richard Rentz Farm
05WS001 BAMBERG BOARD OF PUBLIC WORKS
05WS002 DENMARK WATER WORKS
05WS003 EHRHARDT TOWN OF
05WS004 OLAR TOWN OF
06IN003 BURLINGTON INDUSTRIES BARNWELL PLANT
06IN004 ALLIED AIR ENTERPRISES
06IN050 GENERAL NUCLEAR SERVICES ALLIED
06IR001 JENKINS FARM
06IR002 Clemson - Edisto Research/Education Center
06IR004 GREEN BLADE TURF GRASS INC
06IR011 BODIFORD FARM
06IR018 SHIVERS TRADING AND OPERATING COMPANY
06IR019 Walker Nix Farms
06IR020 Rob Bates Farm
06IR021 Former Agrosol LLC
06IR022 C Kelly Craig Farms
06IR023 JWB Farming LLC
06IR025 Walker Nix Farms
06IR026 Jason Still Farm
06IR027 Walthers Investments, LLC, Wiley Fork Tract
06IR029 Muns farm
06IR031 Nimmer Turf - Blackville Farm
06IR032 Gene Bolen, LLC
06IR033 Jason Still Farms
06IR034 Youngblood Farms
06IR035 Heritage Gee

06IR037 Gregg B Bates Farms
06IR038 BC Farms, Inc./Wiley Fork Tract
06IR039 Chappell Farms
06IR040 Danny Hege Farm
06WS001 WILLISTON TOWN OF
06WS002 BLACKVILLE TOWN OF
06WS003 BARNWELL CITY OF
06WS004 BAMBURG BPW
06WS005 HILDA TOWN OF
09AQ029 BREEZE HAVEN FARM
09GC001 Calhoun Country Club
09IN001 DAK Americas LLC-Columbia Site
09IN002 DEVRO-TEEPAK PLANT
09IR001 RAST J D & SONS
09IR002 WILES J D FARM INC
09IR003 COTTON LANE FARMS
09IR004 CALHOUN TRADING CO
09IR005 Mixon Farms
09IR009 HAIGLER FARMS INC
09IR010 SMITH W M FARM
09IR012 LONGSTREET FARMS INC
09IR013 BRH FARM PROPERTIES LLC
09IR014 Low Falls Wholesale Nursery
09IR015 PEACAN HILL FARM
09IR016 BLACKWOODS FARM
09IR021 PERROW MOSS H FARM
09IR022 DIETRICH GARY FARM
09IR024 PERROW GEORGE T FARM
09IR026 MOSS JAMES M III FARM
09IR033 Low Falls Wholesale Nursery
09IR034 M Shirer Farms
09IR035 Palmetto Farms
09IR036 Reeves (Jeff) Farm
09IR037 McKeowen Farms
09IR038 John Olson Farm
09IR039 J & G Farms
09IR040 K & R Farms, LLC
09IR041 Moore Farms
09IR042 Haigler and Sons Farms
09IR043 Kaigler Farms
09IR044 LB Wannamaker Seed
09IR045 Richard's Farms
09IR047 Holman farms
09IR048 Moss H Perrow Farms
09IR049 Holman Farms
09IR050 Jason Waltz Farm
09IR051 Randy Stabler Farms
09WS001 ST MATTHEWS TOWN OF
09WS002 CAMERON TOWN OF
09WS003 UPPER CALHOUN BELLEVILLE
09WS004 UPPER CALHOUN SANDY RUN
32GC002 CHARWOOD COUNTRY CLUB

32GC003 ENHANCED GOLF MNGMNT HIDDEN VALLEY GC
32GC004 COUNTRY CLUB OF LEXINGTON
32GC008 LEX GREENS LTD DBA COOPERS CREEK GC
32IN002 GASTON COPPER RECYCLING CORPORATION
32IN004 SOUTHERN PLASTICS COMPANY
32IN007 Michelin North America
32IN008 US Silica Company (Columbia Plant)
32IN052 SOUNT CAROLINA MINERALS, INC LEXINGTON
32IR001 DUNBAR FARM
32IR002 MAC BILLY FARM
32IR003 TAYLOR JODY FARMS
32IR006 GUNTER FARMS
32IR008 CHAMPION INTERNATIONAL CORP LEXINGTON
32IR010 LUTHER E KNEECE FARMS LLC
32IR013 Walter P. Rawl and Sons, Inc./WP Rawl Farm
32IR021 SEASE JAMES R FARMS INC
32IR022 FINK FARM
32IR026 BODENHAMER FARM
32IR031 SHUMPERT HULEY G
32IR034 KNEECE DELANO R & SON INC
32IR048 LUTHER E KNEECE FARMS LLC
32IR049 T & E FARMS C/O Tony Rucker
32IR050 Thomas C. Fink Farm
32IR051 Jackson (Andy) Farm
32IR052 O'Reilly Farms LLC
32IR053 Jackson Brothers Farm, LLC
32IR054 Russell Hoffman Farms
32IR055 Rucker Farms
32IR056 Clayton Rawl Farms Inc
32IR057 Sand Pit
32MI001 MARTIN MARIETTA AGGR CAYCE QUARRY
32MI002 Bluegrass Materials Co., LLC/Edmund Mine
32MI003 Columbia Silica Sand, Inc.
32WS002 BATESBURG LEESVILLE #2
32WS006 GASTON RURAL COMMUNITY WATER DISTRICT
32WS009 SWANSEA TOWN OF
32WS011 CHAPIN TOWN OF
32WS012 Gilbert-Summit Rural Water District
32WS050 PELION TOWN OF
32WS051 Columbia Silica Sand, Inc.
38AQ051 LANDLOCKED FISHERIES INC
38AQ060 CATFISH FINGERLING PRODUCER ORANGEBURG
38AQ066 SELDOM REST FARMS
38GC004 Orangeburg Country Club
38GC007 SANTEE COOPER CC LAKE MARION CC
38GC008 BOWMAN COUNTRY CLUB
38GC010 SANTEE NATIONAL GOLF CLUB
38IN001 HOLCIM INC
38IN003 GREENWOOD MILLS INC LINER PLANT # 17
38IN004 VELCOREX INC
38IN005 Brewer Properties (ROSEBURG FOREST PROD SOUTH HOLLY HILL)
38IN007 HUGHES AIRCRAFT PWB MANUFACTURING FAC

38IN008 Summers Concrete Contracting, Inc.
38IN009 Regional Medical Center
38IN010 Carolina Chips Woodyard
38IR001 WEATHERS FARMS INC
38IR002 WOLPERT FARM
38IR003 MEADWESTVACO SC LLC/WALWORTH UNIT
38IR004 MILLWOOD FARM
38IR005 WIGGINS T J & SON INC
38IR006 WILLIAMSON J A FARM
38IR007 NUMERTIA PLANTATION
38IR008 Haigler Farms
38IR009 SUPER SOD PATTEN SEED COMPANY
38IR011 BICKLEY FARM
38IR017 GREEN ACRES FARM
38IR018 ZEIGLER FARM
38IR019 JAMESON FARMS INC
38IR022 ARGO FARM
38IR024 ST JULIAN PLANTATION
38IR026 SPRINGFIELD GRAIN CO BROWN KIRBY & SONS
38IR028 GARRICK FARM
38IR029 COASTAL HAY FARMS
38IR030 HOLSTEIN M J FARM
38IR031 SPRINGFIELD GRAIN CO BROWN KIRBY LEASED
38IR033 WALKER BROTHERS FARM
38IR034 JAMESON FARMS INC BONNETTE FARM
38IR035 BINNICKER FARM
38IR036 FELKEL FARM
38IR038 EMBEFORD DAIRY FARM
38IR039 NEWLIFE TURF FARMS INC.
38IR040 SHADY GROVE PLANTATION & NURSERY INC
38IR041 GLENN BARR FARM
38IR042 GRAY FARM
38IR043 WILLSHIRE FARMS INC
38IR047 WEBBER FARM
38IR048 FELDER DAIRY FARM
38IR063 RILEY T F
38IR064 MEADWESTVACO SC LLC/BURCH FIBER FARM
38IR067 NORWAY FARM
38IR068 Martin Williams Farms
38IR069 Russell Farms
38IR070 Strock Farm
38IR071 M.J Holstein
38IR072 Seven Oaks Farm
38IR073 Gin Branch Farms
38IR074 Shuler Field Vance
38IR075 Tampa Creek Farms, LLC
38IR078 Turf Connections - Springfield
38IR079 Carolina Fresh Farms, LLC
38IR083 D&J Farms
38IR084 Hutto Brothers Partnership
38IR085 Holman Farms
38IR086 Dantzler Farms

38IR088 Walker Farms
38IR089 Bozard
38IR090 Lindsey
38IR091 MIXON FARMS
38IR092 Cotton Lane Farms
38IR093 Haigler Farms Inc.
38IR094 Shuler Farm
38IR095 Gunter Farms
38IR096 Old Rast Place
38IR097 Lewis W. Way Farms
38IR098 R & W Farms
38IR099 Salley Farm
38MI001 MARTIN MARIETTA AGGR ORANGEBURG QUARRY
38PT001 SCE&G COPE GENERATING STATION
38WS001 SANTEE TOWN OF
38WS002 ORANGEBURG DEPT OF PUBLIC UTILITIES
38WS003 NORTH TOWN OF
38WS004 ELLOREE WATER SYSTEM
38WS005 HOLLY HILL TOWN OF
38WS006 NORWAY TOWN OF
38WS007 BRANCHVILLE TOWN OF
38WS008 BOWMAN TOWN OF
38WS009 SPRINGFIELD TOWN OF
38WS010 EUTAWVILLE TOWN OF
38WS011 SILVER SPRINGS W/D
38WS051 BULL SWAMP RURAL WATER CO

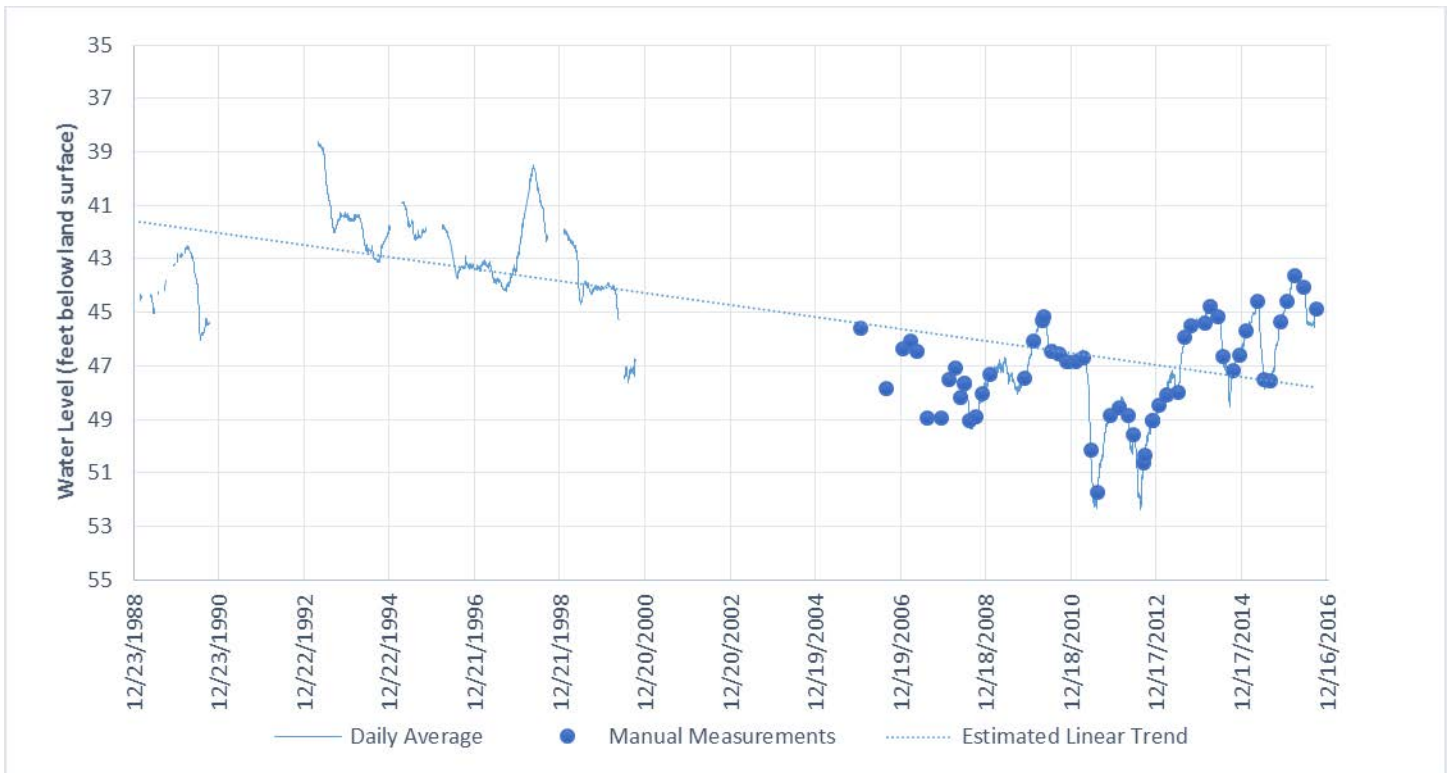


Figure 4: Barnwell County, BRN-0352 Tertiary Sand aquifer average daily groundwater levels.

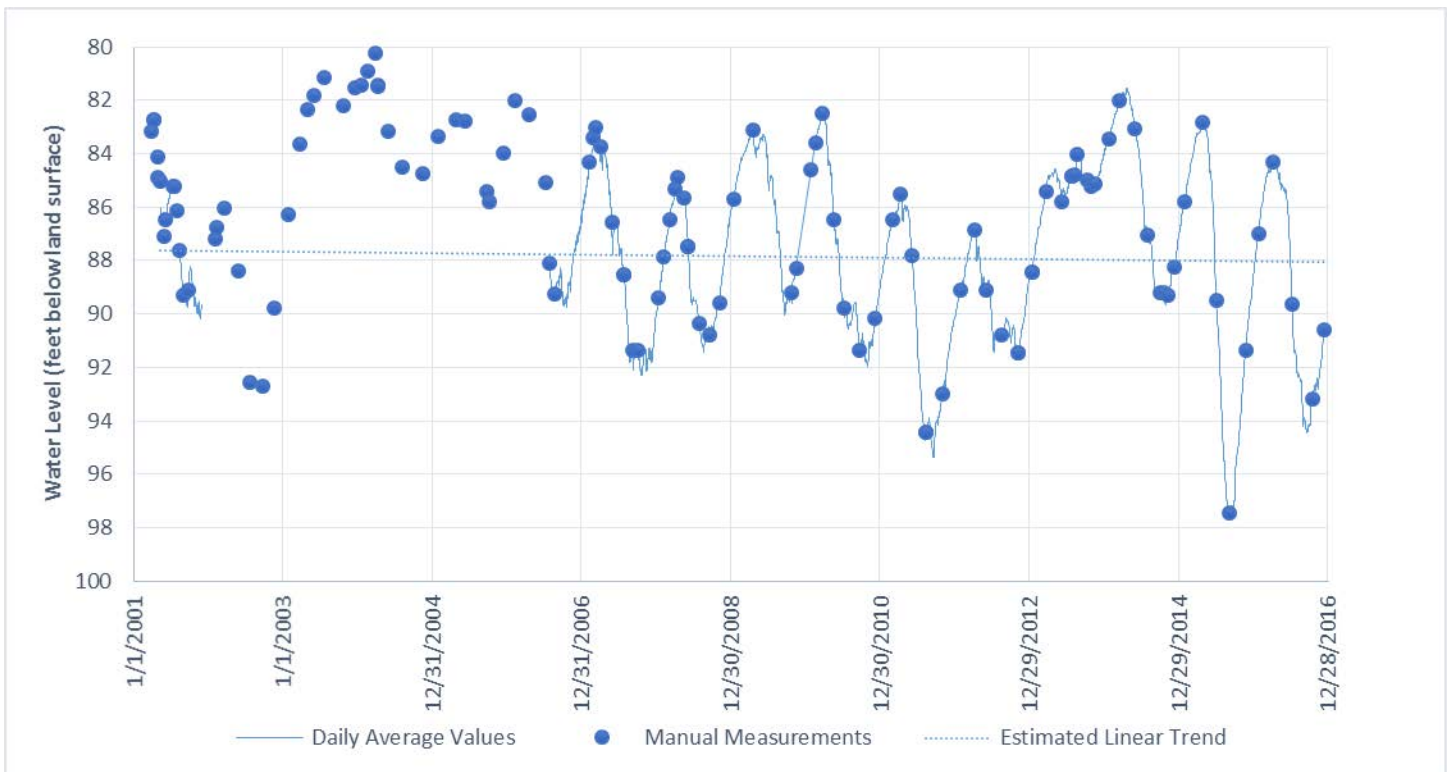


Figure 5: Orangeburg County, ORG-0430 Tertiary Sand aquifer average daily groundwater levels.

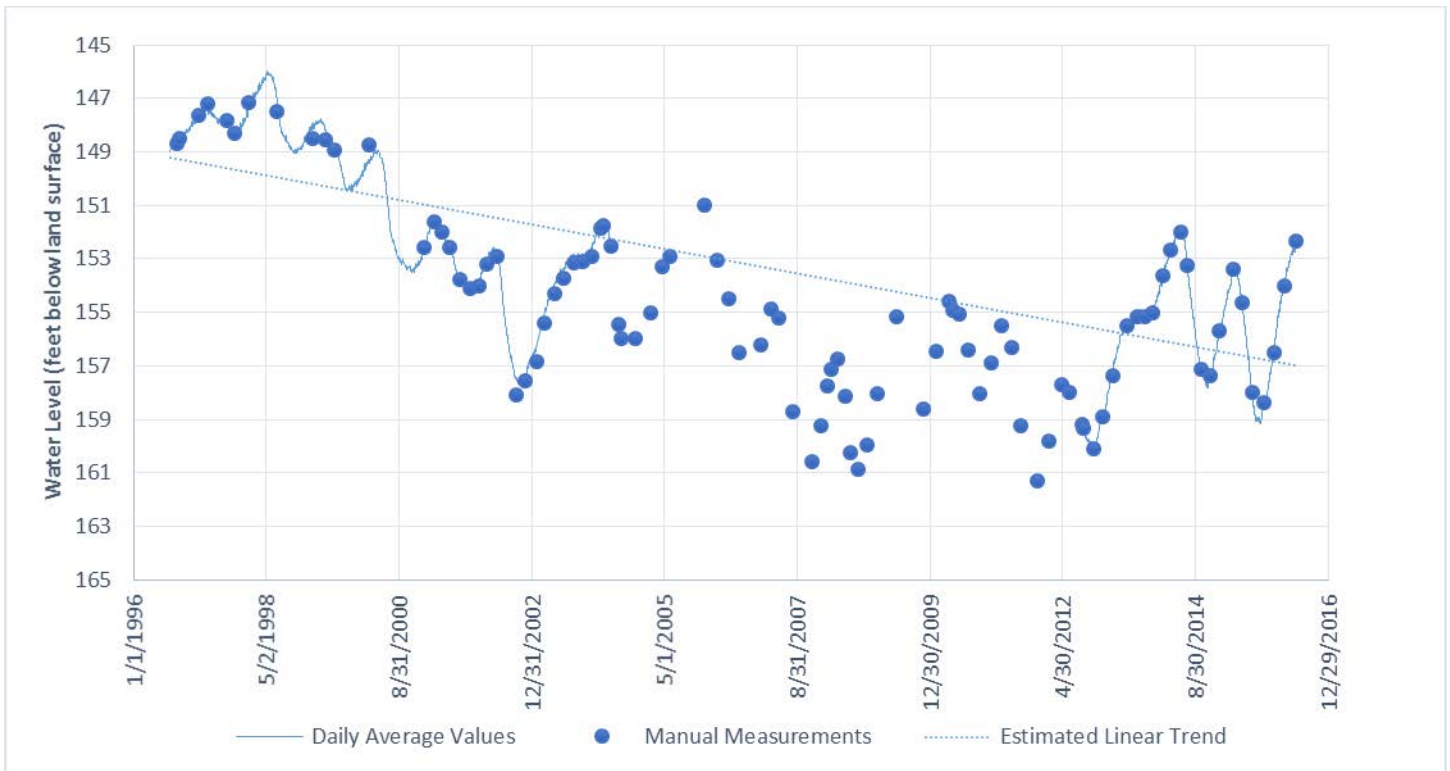


Figure 6: Allendale County, ALL-0375 Tertiary Sand aquifer average daily groundwater levels.

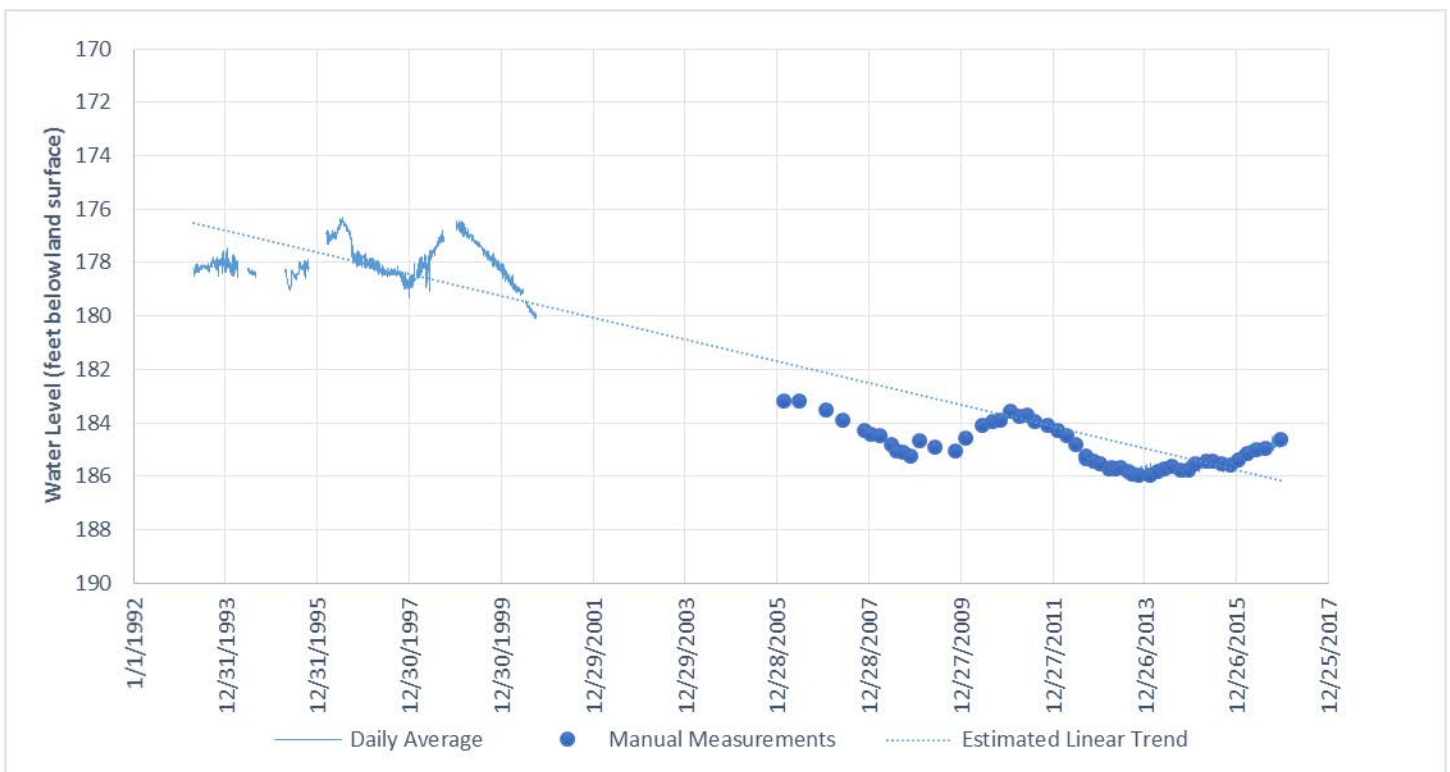


Figure 8: Aiken County, AIK-0824 Crouch Branch aquifer average daily groundwater levels.

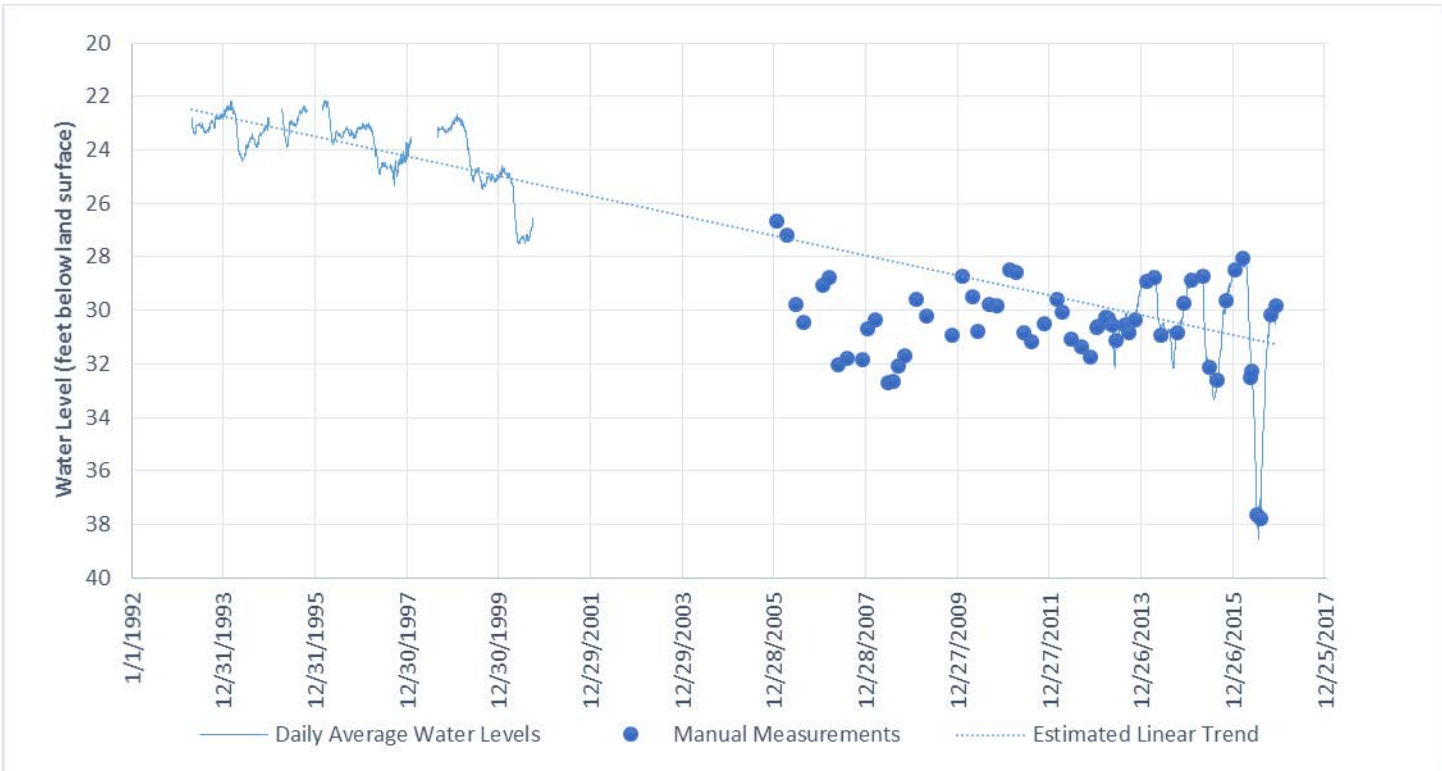


Figure 9: Aiken County, AIK-0847 Crouch Branch aquifer average daily groundwater levels.

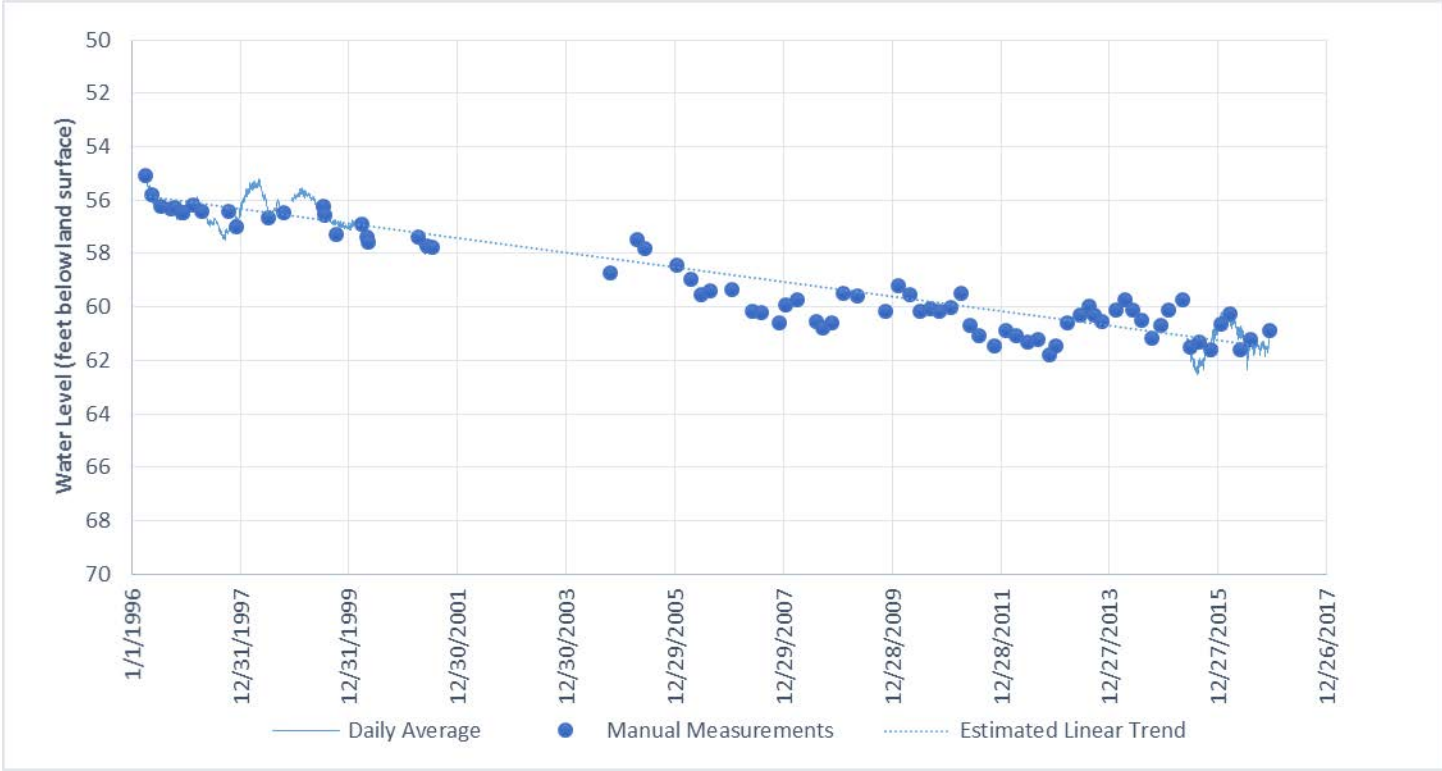


Figure 10: Aiken County, AIK-2379 Crouch Branch aquifer average daily groundwater levels.

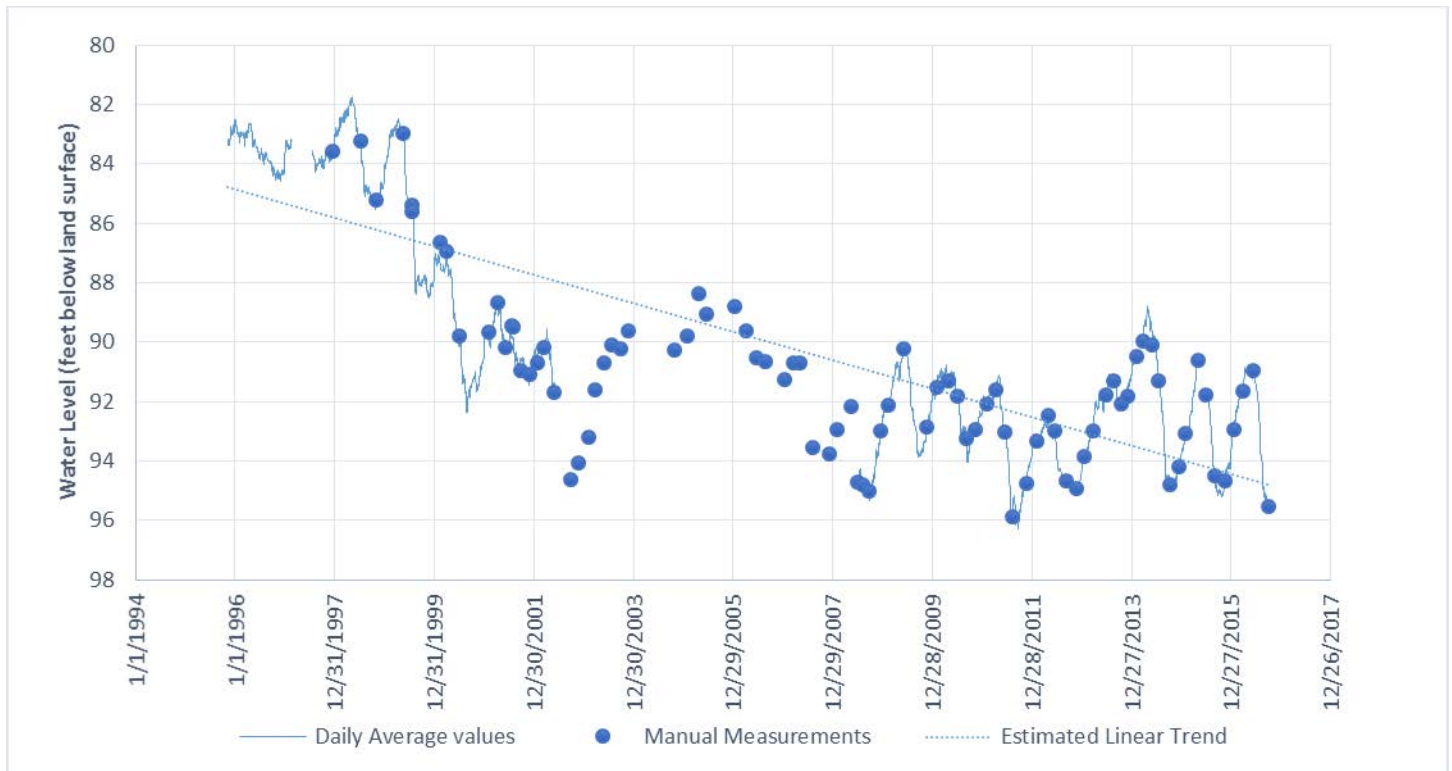


Figure 11: Allendale County, ALL-0367 Crouch Branch aquifer average daily groundwater levels.

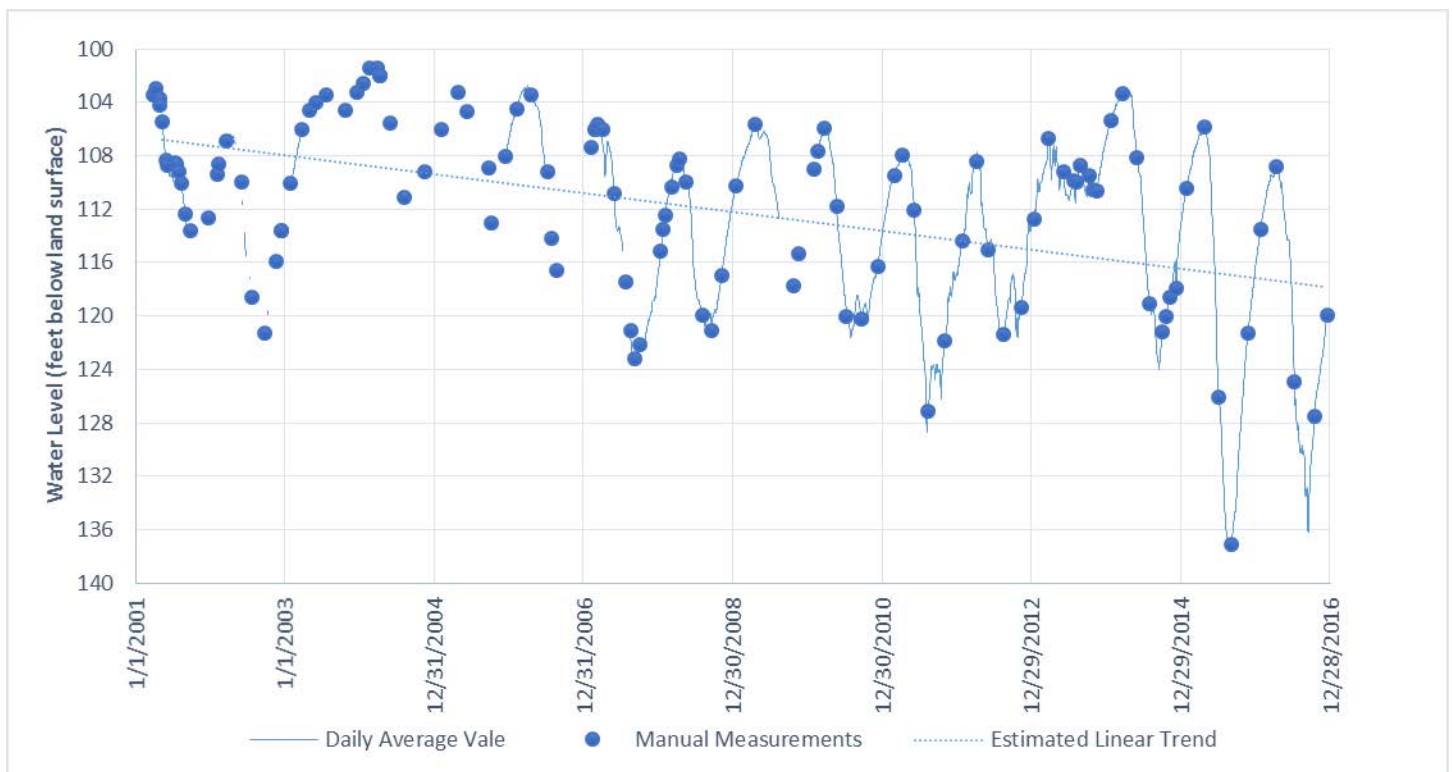


Figure 12: Orangeburg County, ORG-0393 Crouch Branch aquifer average daily groundwater levels.

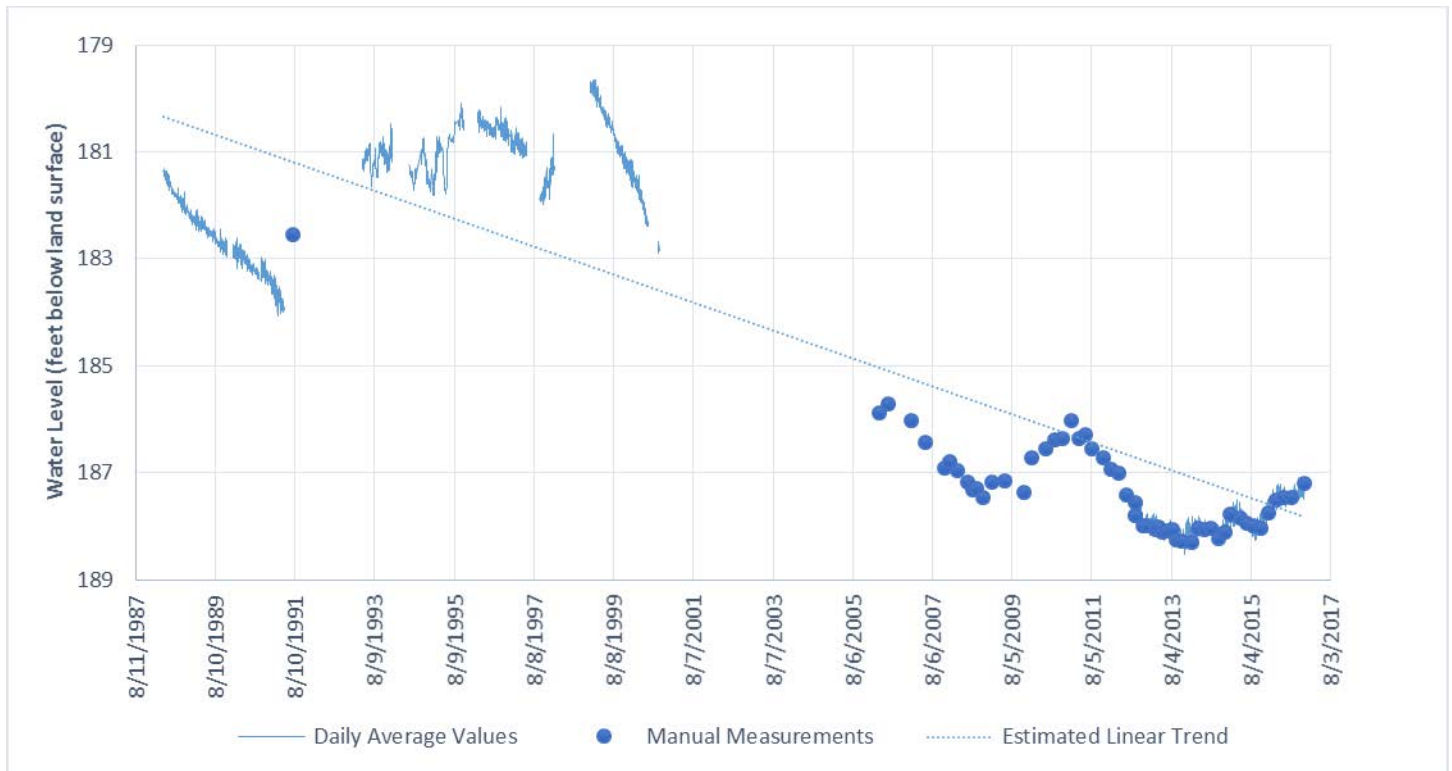


Figure 14: Aiken County, AIK-0817 McQueen Branch aquifer average daily groundwater levels.

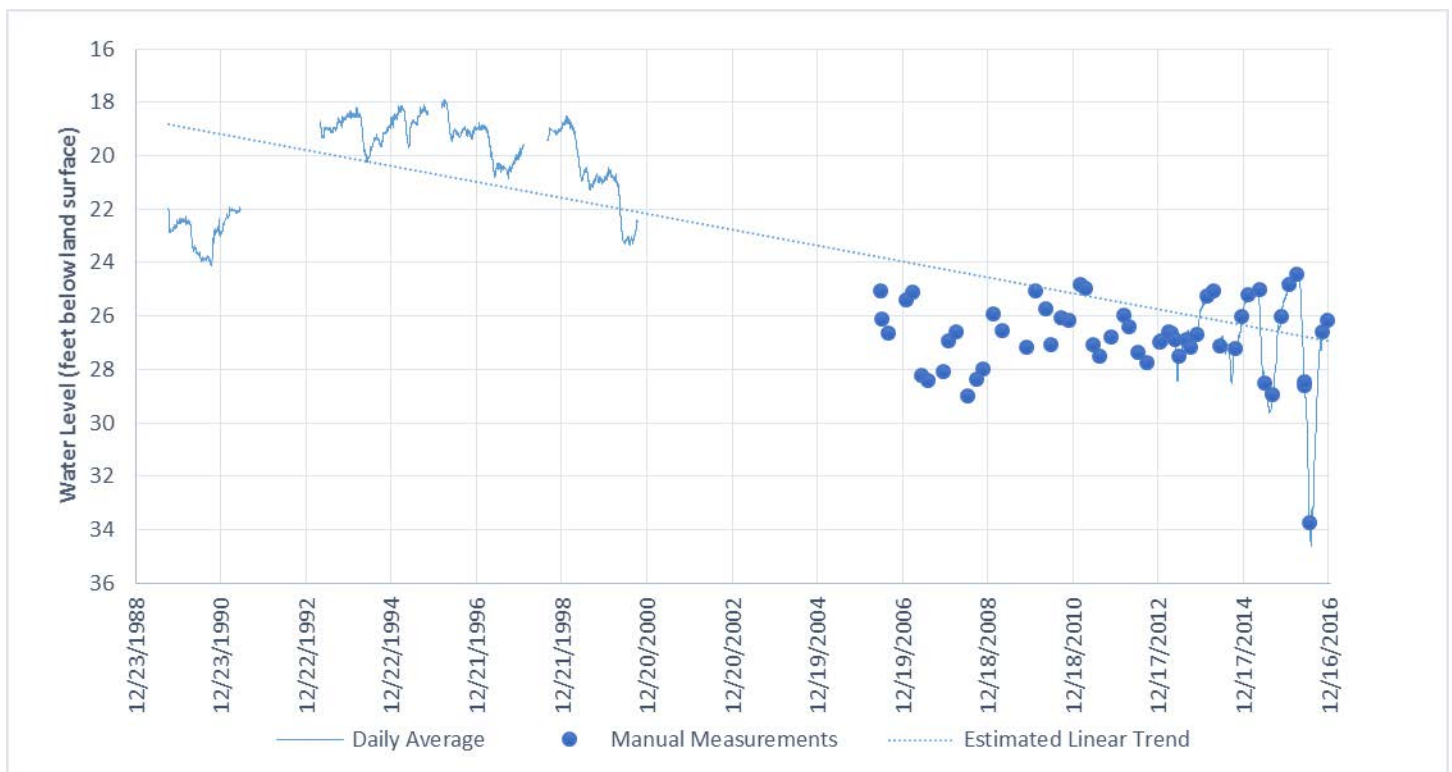


Figure 15: Aiken County, AIK-0826 McQueen Branch aquifer average daily groundwater levels.

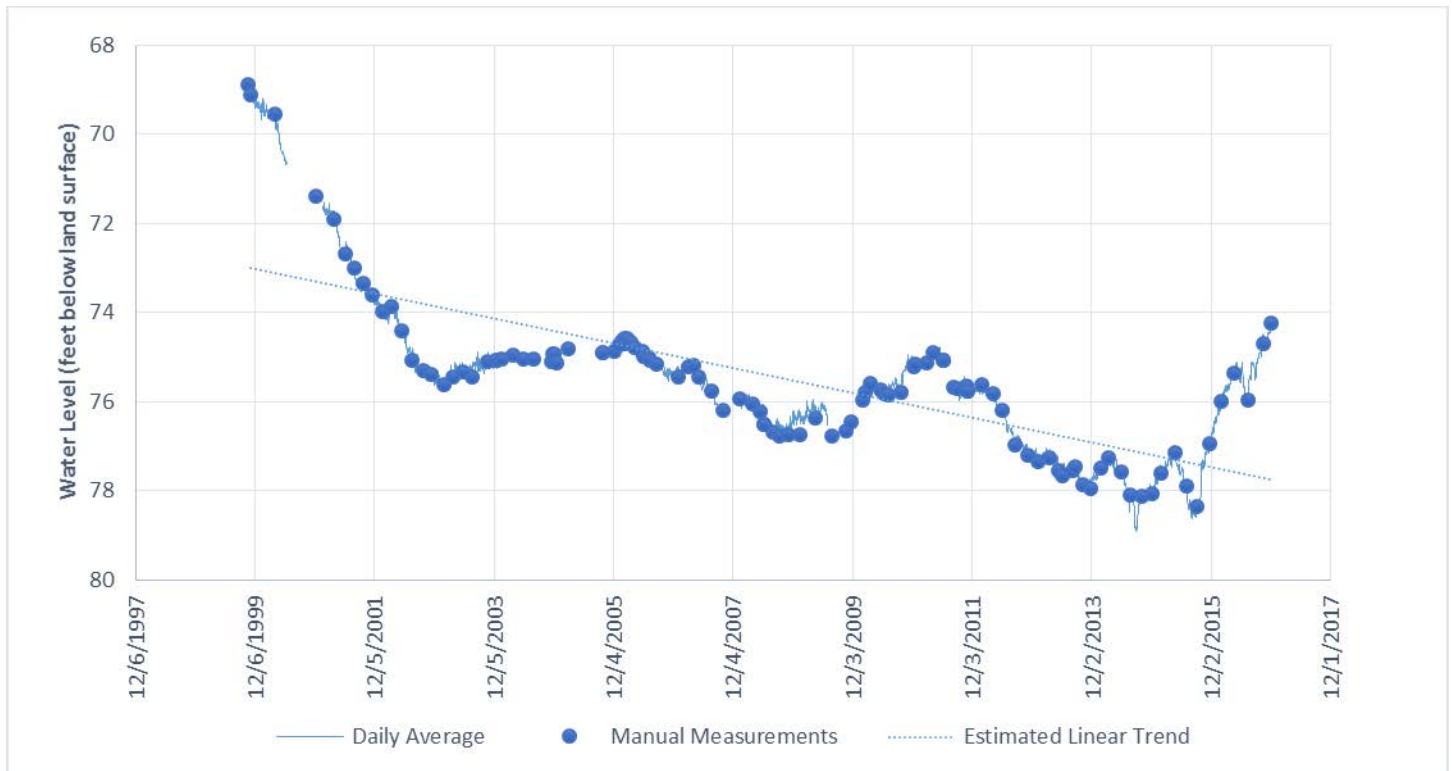
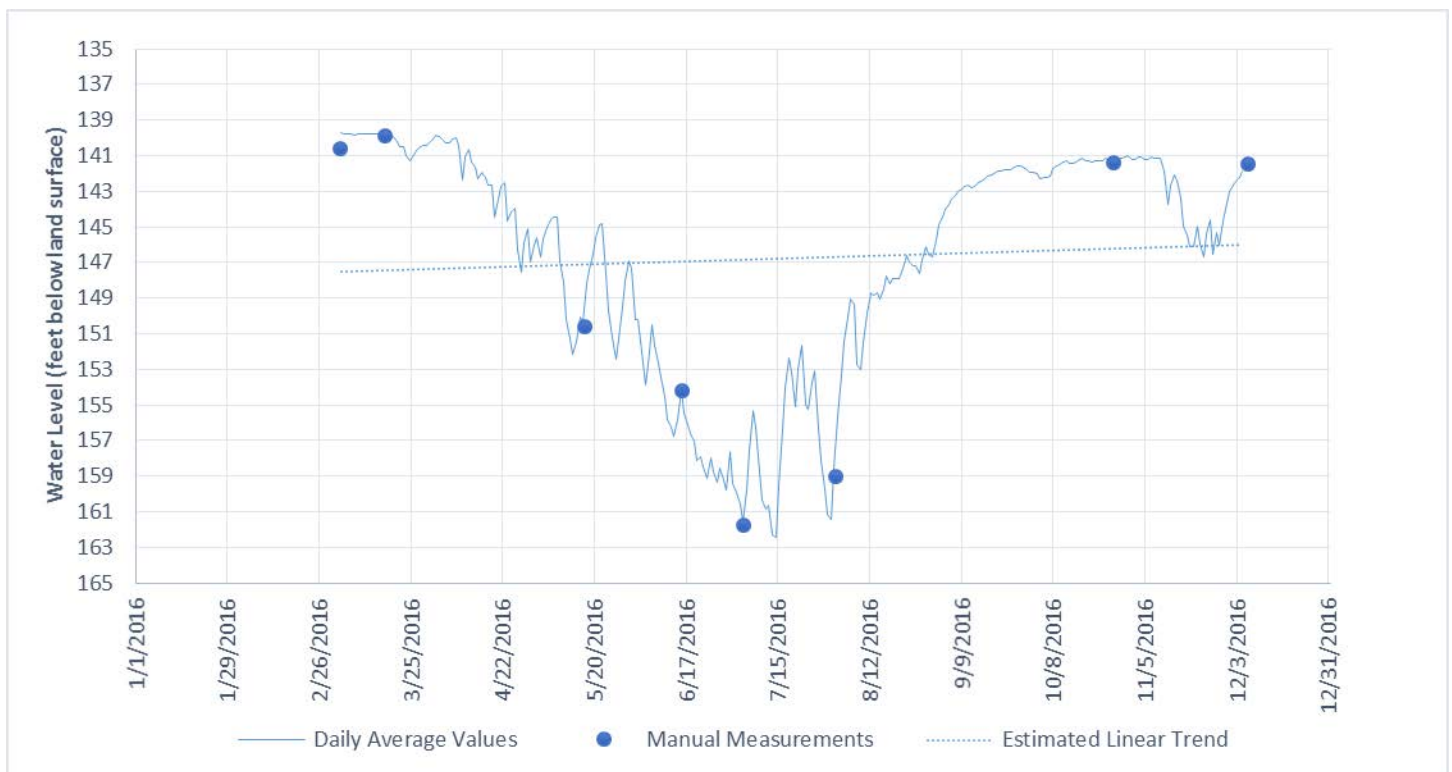


Figure 16: Lexington County, LEX-0844 McQueen Branch aquifer average daily groundwater levels.



Aiken County, AIK-0344 Crouch Branch aquifer average daily groundwater levels.

** I added AIK-0344 because of its proximity to the “mega farm” in Oakwood-Windsor. Unfortunately, it shows a positive linear trend even with the drastic 20ft drawdowns this past summer.



Save The Date!

Aiken County Stakeholder Meeting (February 8, 2018)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017).

You are invited to attend the last of a series of stakeholder meetings being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Thursday, February 8, 2018

6:00 PM – 7:30PM

Aiken Electric Cooperative
2790 Wagener Road
Aiken, SC 29801

Directions

Take I-20W, exit 29 (Wire Road). Take State Hwy 264 and New Holland Rd to SC-302/SC-4W. Destination will be on the left.

Additional information about the Proposed Western Capacity Use Area is available at: www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: Rob Devlin (devlinrj@dhec.sc.gov).



Proposed Western Capacity Use Area
 Aiken County Stakeholder Meeting
 February 8, 2018

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**Proposed Western Capacity Use Area
Aiken County Stakeholder Meeting
February 8, 2018**

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Lucy Knowles	144 FWO luc.knowles39@gmail.com



**Proposed Western Capacity Use Area
Aiken County Stakeholder Meeting
February 8, 2018**

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NAME AND/OR ORGANIZATION	CONTACT (EMAIL, PHONE OR ADDRESS; <u>EMAIL PREFERRED</u>)
<i>Christine C. Coats</i>	<i>803-266-4588</i>



Proposed Western Capacity Use Area
 Aiken County Stakeholder Meeting
 February 8, 2018

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Thomas Hayes	
MICHAEL SWEARIN BEN	
KELLY SWEARIN BEN	
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Proposed Western Capacity Use Area
 Aiken County Stakeholder Meeting
 February 8, 2018

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Brooke Myres SCDNR	Myres B @ DNR, SC. GOV
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Aiken County Stakeholder Meeting
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Clare Koon	
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Jeremy Walther	
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PETE DE LOURDES	-
C.W. DE LOURDES	-
Mac Toole S.C. House	MToole205e.RP.COM



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Aiken County Stakeholder Meeting
February 8, 2018

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Marion Belcher	mpb3265@aol.com
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Darrel D. Walter	walterda@bellsouth.net
FRAN DOTO	See Fran Doto 502 Pine Acres, Windsor SC
Karen Alyander	BAYS8@att.net



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Aiken County Stakeholder Meeting
February 8, 2018

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Proposed Western Capacity Use Area
 Aiken County Stakeholder Meeting
 February 8, 2018

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Proposed Western Capacity Use Area
Aiken County Stakeholder Meeting
February 8, 2018

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S.C. Department of Health and Environmental Control

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Aiken County Stakeholder Meeting
February 8, 2018

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Marc + Pat Carney	Mcarney622@gmail.com
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S.C. Department of Health and Environmental Control

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February 8, 2018

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Julie Worley	jow2590@gmail.com
Gary Bunker	gbunker@aikencountysc.gov
Grace Vance	twinsis1@gmail.com
Milda BURKE	LBURKE3456@AOL.COM
Dorie Carroll, Carroll Law Offices	dorie@carroll-law-offices.com
Linda Lee	careth3@hotmail.com



Save The Date!

Stakeholder Meetings – October 12, 2017 and October 19, 2017

Proposed Western Capacity Use Area:

The proposed area is based on the *Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina* that was published in May 2017.

You are invited to attend a stakeholder meeting being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and any other interested parties are invited to participate in the discussion.

Thursday, October 12, 2017 - 6:00 PM (Bamberg County)

Denmark Train Depot
200 Baruch Street
Denmark, SC 29042

Or

Thursday, October 19, 2017 - 6:00 PM (Allendale County)

USC Salkehatchie - Science/Administration building
465 James Brandt Blvd.,
Allendale, SC 29810

More stakeholder meetings are being scheduled in Aiken, Calhoun, and Lexington Counties in the coming months.

To view the report or other information about the [Proposed Western Capacity Use Area](http://www.scdhec.gov/groundwaterplans), please visit: www.scdhec.gov/groundwaterplans.

Please share this information with others who may be interested!

If you have any questions, please contact **David Baize** by phone at (803) 898-4272 or by email at baizedg@dhec.sc.gov. Please send written comments about the plan to **Rob Devlin**, BOW, SCDHEC, 2600 Bull Street, Columbia, SC 29201 or by email to devlinrj@dhec.sc.gov.



**Proposed Western Capacity Use Area
Stakeholder Meeting
October 19, 2017**

NOTE: Personal information provided on this document is subject to public scrutiny or release.

NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
<i>PETE DELORME</i>	
<i>Joe Oswald IV</i>	803-686-0674
<i>Connelly James</i>	
<i>Raymond Rowley</i>	803-584-6932



Proposed Western Capacity Use Area
Stakeholder Meeting
October 19, 2017

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
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Jacob Oswald	jacob.oswald.92@gmail.com
Diane Bosler	dbosler@bellsouth.net



Proposed Western Capacity Use Area
 Stakeholder Meeting
 October 19, 2017

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Woody Dangler	WDSCFB@NTI.NET.COM
Jimmy Duncan	803-584-3233 jduncan955@gmail.com



Save The Date!

Stakeholder Meetings – October 12, 2017 and October 19, 2017

Proposed Western Capacity Use Area:

The proposed area is based on the *Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina* that was published in May 2017.

You are invited to attend a stakeholder meeting being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and any other interested parties are invited to participate in the discussion.

Thursday, October 12, 2017 - 6:00 PM (Bamberg County)

Denmark Train Depot
200 Baruch Street
Denmark, SC 29042

Or

Thursday, October 19, 2017 - 6:00 PM (Allendale County)

USC Salkehatchie - Science/Administration building
465 James Brandt Blvd.,
Allendale, SC 29810

More stakeholder meetings are being scheduled in Aiken, Calhoun, and Lexington Counties in the coming months.

To view the report or other information about the [Proposed Western Capacity Use Area](http://www.scdhec.gov/groundwaterplans), please visit: www.scdhec.gov/groundwaterplans.

Please share this information with others who may be interested!

If you have any questions, please contact **David Baize** by phone at (803) 898-4272 or by email at baizedg@dhec.sc.gov. Please send written comments about the plan to **Rob Devlin**, BOW, SCDHEC, 2600 Bull Street, Columbia, SC 29201 or by email to devlinrj@dhec.sc.gov.



**Proposed Western Capacity Use Area
Stakeholder Meeting
October 12, 2017**

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
Hoyens-Bisim City of Denmark	793-3734
Henry S. Michan	793 3571
Rebecca Van Loenen	985-520-2633
Chalmers Mikell	cmikell@scfb.com
PETE DELORME	PETER DELORME@BEILSON.H.NET



Proposed Western Capacity Use Area
 Stakeholder Meeting
 October 12, 2017

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
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PATTY CARSON	803-247-2101 MAYOR@TOWNOFNORTH-SC.GOV
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Jeremy Walker	
Celine A. Huber	803-793-3734 City of Denmark
JAKE N. BOOKARIS	803-793-3055



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
October 12, 2017

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
BAMBERG City SOIL & WATER BOARD	KEVIN SEASE 803-300-0147
Skyrider Aeronautics	Daniel Scheiner 706-399-2762
George Crawford	803-591-5028
Lance A. Hiers	803-482-6699
Austin Siegle	
David Bishop	843-209-1910 , dbishop@trc.org
L.H. Hoyer & Associates	L.H. Hoyer@ILHACA.COM
JTT Owers	JTT Owers . Biz



Save The Date!

Stakeholder Meeting (July 18, 2017)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017)

You are invited to attend the first of a series of stakeholder meetings being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Tuesday, July 18, 2017

6:00 PM

Edisto Research and Education Center
64 Research Street
Blackville, SC 29817

Directions

From the intersection of Hwy 3 and Hwy 78 in Blackville, proceed west on Hwy 78 towards Williston and Research Street will be approximately 3.4 miles on the left.

Additional meetings will be held in all affected counties in the coming months.

Additional information about the Proposed Western Capacity Use Area is available at: www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: David Baize (baizedg@dhec.sc.gov) or Rob Devlin (devlinrj@dhec.sc.gov).



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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Shirley K. Bias	
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Proposed Western Capacity Use Area
 Stakeholder Meeting
 July 18, 2017

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL OR ADDRESS)
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Johnny Beas	803-793-0143
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<i>[Signature]</i>	503-584-2565 INFO@CENTRALFARM.COM
Don B Still	Libbydstill@tds.net



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area Stakeholder Meeting July 18, 2017

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Table with 2 columns: NAME OR ORGANIZATION, CONTACT (PHONE, EMAIL OR ADDRESS). Rows include Tom [unclear], Hugo Kristyn, R. Hawley, Daniel D. Walker, Laurie Copeland, Ted Millings, SRNS, Charles Ray/Rita Brown, PETER DE CONNE, and Rusty Kinard.



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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Anthony Walther	awalther@waltherfarms.com
PATRICIA RUCKER	803-266-3577 - patricia.rucker79@gmail.com
Carlton Shenly	807-514-0461 carlton.shenly@gmail.com
Pony Busbee	803-606-2438 Pony Barber Truck Parts, own
Baynaed Connelly	803-584-0932 baynaedconnelly@yahoo.com



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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**Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017**

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Cecil Waltz	803-446-1515
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S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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Watts Well Drilling	Chris Watts 803-309-5146
Nettles Farms	Joe Nettles 803-259-2378
Nettles Forestry	Brenda Nettles 803-259-2378
BOB @	T.O. Sander 803-259-3469
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JERRY WRIGHT	803-295-3103



Proposed Western Capacity Use Area
 Stakeholder Meeting
 July 18, 2017

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Trent Rentz	803-793- 4156 7013
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S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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Philip Stawby	wstf@att.net
Alonzo L. Frazier	afrazier@barnwellsc.com
Elizabeth D. Frazier	efrazier@barnwellsc.com
Dryan Permon	14 Owens Pond Rd Dikow
Ereke Plantation LLC Steel Creek	319 steel creek rd Martin SC.

Box 325, Norcross, SC 29163



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Stakeholder Meeting
July 18, 2017

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL OR ADDRESS)
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Alan Still	astill@a1thru.com
John C. Dirmas	1420 Old Kammell Rd. Williston S.C. 29573
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Madison Harrington	MadisonReidh@gmail.com
LARRY STILL	STILL-well Dring
Matt Cornall	MCornall@SCDA.SL.GOV
Noel Schweers	noel.schweers@morris.com



Save The Date!

Calhoun County Stakeholder Meeting (January 9, 2018)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017).

You are invited to attend the fifth of a series of stakeholder meetings being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Tuesday, January 9, 2018

6:00 PM – 7:30PM

John Ford Banquet Center
304 Agnes Street
St. Matthews, SC 29135

Directions

Take I-26, exit 136. Merge onto SC-6 E towards St. Matthews. Turn right onto US-176 S, then take a left onto Bridge St. Turn left onto Herlong St., then right onto Agnes St., destination will be on the left.

Additional meetings will be held in all affected counties.

Additional information about the Proposed Western Capacity Use Area is available at:

www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: David Baize (baizedg@dhec.sc.gov) or Rob Devlin (devlinrj@dhec.sc.gov).



**Proposed Western Capacity Use Area
Calhoun County Stakeholder Meeting
January 9, 2018**

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
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Joe McRee	
Abel Hurley	
CHARLES DAVIS	CDVS@CLEMSON.EDU
Roger Hill	RHILL36@att.net 803-429-3381
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PETE DELORME	803-426-6113

Proposed Western Capacity Use Area
 Calhoun County Stakeholder Meeting
 January 9, 2018

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
Margaret Spaulding (Senator: Tim Scott)	Margaret_Spaulding@scott.senate.gov
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Cubie Jeter	803-707-9718
MIKE SWEARINGEN	803-518-1959
John Felker	803-682-3446
James Miller	803-446-4698

Proposed Western Capacity Use Area
Calhoun County Stakeholder Meeting
January 9, 2018

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
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Proposed Western Capacity Use Area
 Calhoun County Stakeholder Meeting
 January 9, 2018

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NAME OR ORGANIZATION	CONTACT (PHONE, EMAIL, OR ADDRESS; EMAIL PREFERRED)
Dorinda Hance	803-378-0200
Willa J. Helmke?	803 531 8815
Ethel Phillips	803-874-3750
John Helmke	jhelmke@supersoc.com



Save The Date!

Lexington County Stakeholder Meeting (January 16, 2018)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017).

You are invited to attend the sixth of a series of stakeholder meetings being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Tuesday, January 16, 2018

6:00 PM – 7:30PM

Lexington Municipal Conference Center
111 Maiden Lane
Lexington, SC 29072

Directions

Take I-20, exit 58 (US-1 S towards Lexington). Merge onto US-1 S. Turn left onto S Lake Dr. Turn right onto Maiden Ln. Destination will be on the left.

Additional meetings will be held in all affected counties.

Additional information about the Proposed Western Capacity Use Area is available at:
www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: David Baize (baizedg@dhec.sc.gov) or Rob Devlin (devlinrj@dhec.sc.gov).



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Lexington County Stakeholder Meeting
January 16, 2018

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S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Lexington County Stakeholder Meeting
January 16, 2018

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Proposed Western Capacity Use Area
 Lexington County Stakeholder Meeting
 January 16, 2018

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Howard Praul	803-730-0437
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S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Lexington County Stakeholder Meeting
January 16, 2018

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Ray Fisher	TFisher



**Proposed Western Capacity Use Area
Lexington County Stakeholder Meeting
January 16, 2018**

NOTE: Personal information provided on this document is subject to public scrutiny or release.

NAME AND/OR ORGANIZATION	CONTACT (EMAIL, PHONE OR ADDRESS; <u>EMAIL PREFERRED</u>)
<i>Tom Cullinan</i>	<i>Tomcullinan3@gmail.com</i>



Save The Date!

Stakeholder Meeting (August 23, 2017)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017)

You are invited to attend the second of a series of stakeholder meetings being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Wednesday, August 23, 2017

6:00 PM – 7:30

Orangeburg – Calhoun Technical College - Auditorium
3250 St. Matthews Road
Orangeburg, SC 29118

Directions

From I-26, Take exit 145, then south on Highway 601 (St. Matthews Road), proceed on Highway 601 for approximately 1 mile and Orangeburg – Calhoun Technical College will be on the left.

Additional meetings will be held in all affected counties in the coming months.

Additional information about the Proposed Western Capacity Use Area is available at: www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: David Baize (baizedg@dhec.sc.gov) or Rob Devlin (devlinrj@dhec.sc.gov).



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area

Orangeburg Public Meeting

August 23rd, 2017

Note: Personal information provided on this document is subject to public scrutiny or release.

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Rick Bryan	bryamb@comcast.net	803-568-4835
Greg Carroll	gregCarroll@ynes5Irrigation.com	803-664-2778
Lee Hendren	Local Reporter @ bellsouth.net	803-496-3242
Chalmers Mike	cmikell@scfb.com	803 936 4288
P. DeLoone	PETER DeLoone @ BellSouth.NET	803-420-6113
LAUREN BURZOVHS	dikensoilandwater@gmail.com	801-529-8410
Brad Aiston		919-410-6551
MARK FERNELL	MARK.FERNELL@SMAN.CO	803-509-1738



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area

Orangeburg Public Meeting

August 23rd, 2017

Note: Personal information provided on this document is subject to public scrutiny or release.

Name (Please Print)	Email Address	Phone Number
MIKE MOSLEY	MMosley@SCANAL.COM	803-217-7345
Noel Hurley	nmhurley@swss.gov	803-750-6126
Bonnie Swearingen	bonnies@aaawelldrilling.com	803 7551203
Woody Dangler	WDSCFB@WTINET.COM	803 206-8741
Gary Spives	gspives@scfb.com	803-206-8772
LANDY WEATHERS	landy5550@yahoo.com	803-829-2558
Skyler Hutto	skyer@williamsattys.com	803-534-5218
Troy Brownlee	tbrownlee@agsouth.com	803-707-9603
Rebecca vanLooveren	Rebecca_vl@outlook.com	985-570-2633
DOUG WEBB	DWEBB@PREFERRED PUMP.COM	803-600-7851



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area

Orangeburg Public Meeting

August 23rd, 2017

Note: Personal information provided on this document is subject to public scrutiny or release.

Name (Please Print)	Email Address	Phone Number
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Daniel Scherer	Daniel.Scherer@Spartan.edu	706-399-2472
Roy R. Lindsey	rlwplaster@yahoo.com	803-682-2899
Vicki Woody	vickiwoody@aol.com	806-340-5465
JOHN OXNER	jokswed@gmail.com	803-422-4718
JOHN F CUTTING	longcreek@tels.net	(803) 533-9730
Jim Ulmer	jimulmer@live.com	
Tanya Bonitabova	riverkeepers@savannahRIE	706-826-8991
Mike Probylowicz City of Aiken	mprobyby@cityofAikenSC.gov	803-514-0128



Proposed Western Capacity Use Area

Orangeburg Public Meeting

August 23rd, 2017

Note: Personal information provided on this document is subject to public scrutiny or release.

Name (Please Print)	Email Address	Phone Number
MEG MORGAN ADAMS	meg.morganadams@gmail.com	706-951-2075



Save The Date!

Columbia Stakeholder Meeting (April 9, 2018)

Proposed Western Capacity Use Area

A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina (May 2017).

You are invited to attend a stakeholder meeting being held by DHEC to discuss the preliminary assessment of groundwater conditions in the proposed Western Capacity Use Area (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties).

Registered groundwater withdrawers, local governments, organizations and other interested parties are invited to participate in the discussion.

Monday, April 9, 2018

6:00 PM – 7:30PM

South Carolina Department of Health and Environmental Control
People's Auditorium
2600 Bull Street
Columbia, SC 29201

Directions

Take I-26W, exit 108B-A (for I-126 towards Columbia). Take left 2 lanes towards US-76/Elmwood Ave exit. Follow Elmwood Avenue to Bull Street. Turn left on Bull Street. Destination will be on the right.

Additional information about the Proposed Western Capacity Use Area is available at:
www.scdhec.gov/groundwaterplans

Please share this information with others who may be interested!

Any questions or comments feel free to contact: Rob Devlin (devlinrj@dhec.sc.gov).



Proposed Western Capacity Use Area
Columbia Stakeholder Meeting
April 9, 2018

NOTE: Personal information provided on this document is subject to public scrutiny or release.

NAME AND/OR ORGANIZATION	CONTACT (EMAIL, PHONE OR ADDRESS; <u>EMAIL PREFERRED</u>)
Back DIXIE Well & Pump	803-593-4027
Grace Vance	803-522-3400
Diana Crowley	803 474 4398
Ryan McElroy	Ryan.mcelroy@waltherfarmers.com
John E. McFarland	john@cedc.com 803-747-1414
Ron Felt	803 422-1266
Joe Green	jgreen@dhs.sc.gov



Proposed Western Capacity Use Area
Columbia Stakeholder Meeting
April 9, 2018

NOTE: Personal information provided on this document is subject to public scrutiny or release.

NAME AND/OR ORGANIZATION	CONTACT (EMAIL, PHONE OR ADDRESS; EMAIL PREFERRED)
KURT NEUPERT SCGWA	kurtppw@bellsouth.net
Cassidy Evans SCFB	cevan5@scfb.org
Nilda Burke	LBURKE3456@AOL.COM



S.C. Department of Health and Environmental Control

Proposed Western Capacity Use Area
Columbia Stakeholder Meeting
April 9, 2018

NOTE: Personal information provided on this document is subject to public scrutiny or release.

NAME AND/OR ORGANIZATION	CONTACT (EMAIL, PHONE OR ADDRESS; EMAIL PREFERRED)
Mitton Quattlebaum	mpgan@ohg@bellsouth.net
Claire Lewis	cclewis@email.sc.edu
Hugo Krzyzyn	hugo@swampvox.com
Bruce Campbell	bcampbel@usgs.gov
Jeremy Lattner	262 279 2450
PETE DELOAN	

STATEMENT OF POSITION

February 8, 2018

Concerned Citizens Safeguarding South Carolina Water (“CCSW” or “Concerned Citizens”) is an association of South Carolina residents dedicated to the protection and preservation of South Carolina’s water resources and its precious natural systems.

It is the position of CCSW that the designation of the Western Capacity Use Area, including but not limited to Aiken County, South Carolina, is a critical immediate step necessary to promote the protection of South Carolina water resources and the State’s important natural systems.

CCSW is represented by Carroll Law Offices P.A., and according to Dione` Carroll, Esq., “without this critical designation, regulators would be severely handicapped in their ability to begin to address the eminent water shortage issues in Aiken County.” The CCSW position on groundwater is confirmed by the findings of SCDHEC and SCDNR as follows:

The South Carolina Department of Health and Environmental Control (Department), in cooperation with the South Carolina Department of Natural Resources (SCDNR), has been evaluating groundwater conditions in the western Coastal Plain region of South Carolina in a series of investigations. SCDNR has previously recommended (SCDNR, 2004) the entire Coastal Plain province should be designated a Capacity Use Area in order to protect aquifer systems and ensure long-term sustainability of the groundwater resources. On July 19, 2016, Aiken County Council requested that portions of Aiken County be designated as a Capacity Use Area.

The Department has reviewed previously published reports on local groundwater conditions by the SCDNR and USGS in conjunction with reported groundwater withdrawal data for the counties of this region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg) to assess the current groundwater conditions in the area. This review indicates that water level declines in the aquifer systems of concern have been influenced by an increase in population, public water supply use and agricultural activities using groundwater and a series of long-standing droughts that have reduced recharge to the aquifer systems.

....

The South Carolina Department of Health and Environmental Control (Department) received a formal request on July 19, 2016 from Aiken County Council to investigate and designate a Capacity Use Area within eastern Aiken County, South Carolina. Section 49-5-60 of the Groundwater Use and Reporting Act states in part that... “In the state where excessive groundwater withdrawal present potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source... the board, after notice and public hearing... shall designate a capacity use area.” The notice and public hearing must be conducted such that local government authorities, groundwater withdrawers, or the general public may provide comments concerning the capacity use designation process. A Capacity Use Area must be designated by the board based on scientific studies and evaluation of groundwater resources and may or may not conform to political boundaries. Designation as a Capacity Use Area requires groundwater withdrawers within the

Capacity Use Area to apply for and obtain a permit from the Department.

SCDHEC and SCDNR Report, A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina, May 2017.

The connection between groundwater and surface water is very significant in portions of South Carolina. CCSW further supports immediate measures to address the critical surface water shortfalls experienced by the Edisto River. And, we support and encourage prompt stakeholder consultation and water resource planning efforts currently in development for the entire State of South Carolina.

For questions, please feel free to contact Dione` Carroll, Esq. at (803) – 514-2557.

From: digger766@aol.com <digger766@aol.com>
Sent: Tuesday, April 10, 2018 1:19 PM
To: Devlin, Rob
Subject: Proposed capacity use area

Mr. Devlin,

I could support this if it is done fairly.
Doing this right and fairly will become a challenge.
It seems to me that the best chance of meeting this challenge will be a diverse, accountable, and invested, board with limited terms to eliminate complacency.

Of whom is the "Board" composed, how are they selected, and who decided the boards make up?

How many make up this board?

Will this same board decide depth, location, and priority of future wells under the proposed plan?

To whom would a potential landowner, farmer, industrialist, or water well driller appeal to should they disagree with, feel wronged or excluded by this boards decisions?

How much input has been given or interest shown by our elected representatives during this planning stage?

A statement was made that "new applications would be evaluated for effect on existing withdraw points", Does this allude to a first come first serve system?

Thank you,
Buck L. Sowers
SC Water Well Drilling Lic. # 766
Ga. Water Well Contractor Lic # 492
SCGWA Member
GAGwP Member
NGWA Member
owner of
DIXIE Well & Pump Service

May 24, 2018

100 Wren Rd. Windsor, SC 29856

South Carolina Department of Health and Environmental Control

To Whom It May Concern:

This memo is one supporting a Capacity Use Designation for the seven South Carolina counties currently being recommended to be so designated by SC DHEC. I am one of several concerned citizens residing in the Windsor area of Aiken County and have no formal education in regards to land and water usage. My reason for writing and supporting this DHEC request comes from having witnessed the significant change in land and water usage in the Windsor area over the last five years.

First – some history some of which you should already be aware:

- In the “South Carolina Water Plan” of 2004 published by South Carolina Department of Natural Resources (DNR), it was recommended that the entire coastal plain of the state be designated a Capacity Use Area.
- Aiken County is currently the subject of a joint USGS/SCDNR/DHEC study to create a model to help predict and manage ground water usage in Aiken County. This study, supported mainly by local public water utilities, was initiated in 2015 due to concerns about the long term viability of local ground water resources.
- Starting in 2013 commercial farming entities began to purchase large tracts of land in the Windsor area. The total area covered by these new farms now totals over 7,000 acres all in the vicinity of Windsor (some actually in Barnwell County very close to Windsor).
- These new farms use center pivot irrigation to mitigate and control the variabilities of nature and to ensure scientifically managed, predictable crop production.
- Total Farm water usage (ground and surface), according to DHEC reported withdrawals, has increased from zero withdrawals reported in 2014 to 2.3 billion gallons reported in 2017.

For comparison purposes, I looked at the City of Aiken usage for 2017, which was 2.8 billion gallons (ground and surface). With 2 new large farm tracts coming on line this year, the total farm usage may exceed that of the entire City of Aiken in 2018.

The above tells me that the usage of ground and surface water in Aiken County has dramatically changed in the last 4 years and that prudent management of this most valued resource is now overdue. I ask that you support DHEC staff’s recommendation to declare the designated counties as a Water Capacity Use area.

Respectfully,

Ray Mansur 803.617.9257

Mr. Robert Devlin, SC DHEC, Bureau of Water, 2600 Bull Street, Columbia, SC 29211

RECEIVED

Rob:

June 9th, 2018

JUN 11 2018

Water Monitoring, Assessment &
Protection Division

I am writing this letter as part of the required Public Opinion comments in regards to passing the Capacity Use Designation in 7 western counties and ask this be attached to a Summary to be sent to the DHEC Board.

We formed a group two 1/2 years ago " Save Windsor SC" to address all the negative issues occurring in our rural & Urban community in East Aiken County. One of our major concerns is that our natural resources are being depleted and the State of SC have not taken aggressive measures to ensure their preservation.

In 1994 when I purchased land in East Aiken County, Beck Well Drilling Company drilled my residential well at a depth of 125 feet. You could reach water at 25 feet down and I was assured by this reputable company that 125 feet was a very safe level to meet my family's future water needs. In 2018, it is now 76.2 feet to reach water. This drop of 51.2 feet is very alarming. I now only have 48.8 feet of water available to meet generations of use. This is very concerning since the State of SC is doing nothing to protect the water supply. We must put laws in place now to slow down these water drops.

DHEC has asked Congress for funds to hire additional staff to monitor groundwater levels and has asked to have Aiken County designated as a capacity use area. We ask that both of these requests be approved. I feel this is our State's most important problem and should be handled now- while we can fix it- rather than procrastinate and loose our water resources. Don't make the same mistakes that California did.

A vote of "YES" for both of these issues is the first step in this process.

Robert E. & Carolyn Barrett, 252 Old Bell Road, Aiken SC 29801

Robert E. Barrett

1 *Carolyn L. Barrett*



Aiken County Council

1930 University Parkway, Aiken, South Carolina 29801
(803) 642-1690 aikencountysc.gov

Drinking Water Protection Division
Bureau of Water
JUN 18 2018
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Gary Bunker
Chairman

Kathy Rawls
District # 1

Camille Furgiuele
District # 2

Danny Feagin
District # 3

Chuck Smith
District # 4

Sandy Haskell
District # 5

Phil Napier
District # 6

L. Andrew Siders
District # 7

Willar H. Hightower, Jr.
District # 8

June 12, 2018

Chairman Mark Elam
Attention: Ms. Lisa Lucas, Clerk of Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Mr. Elam,

I'm writing in regards to the proposed Western Capacity Use Area (CUA) that is under consideration by the South Carolina DHEC Board. Aiken County is supportive of this initiative, and it will be in the best interests of the citizens of Aiken County to be included in the Western CUA. Please find attached the letter I wrote to former Chairman Amsler on this topic last November, and also the resolution passed by the Aiken County Council in 2016 regarding the CUA.

In Aiken County, as a result of population growth and more intensive agricultural uses, we've seen both declines in the water table for wells and reductions in the flow rate of the Edisto River. These problems are compounded in drought years. And while Aiken County is proactive in trying to understand the dimensions of the issue – we're currently conducting a multi-year, county wide ground water study with the U.S. Geological Survey – legally the burden of providing and maintaining a regulatory framework rests with the state.

At this point, the impact is felt mostly on private well owners and recreational users of the Edisto River. But it doesn't take much imagination to see how – if current trends continue – this issue will grow to the point where further growth and economic expansion are impacted by the limits of our region's fresh water supply. And to compound the problem further, the issues within the proposed Western CUA will ultimately impact our downstream neighbors.

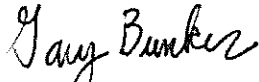
Unfortunately, this issue is too frequently couched in terms of "activists versus the mega-farms" or "restrictions versus growth." The real focus must be on the totality of our region's water resources and how to plan for its use in light of population growth, industrial development, and more intensive agricultural uses. The era of water being a "free economic good" is coming to an end, and water must be treated as any other finite resource. The alternative to acting today is waking up tomorrow to a crisis that will demand draconian restrictions and real economic pain.

June 12, 2018
Mr. Mark Elam
Page two

I echo the conclusion of the "Preliminary Assessment of the Groundwater Conditions" report produced by DHEC and DNR in May 2017 that stated: "It is appropriate to incorporate the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg as the Western Capacity Use Area ... under one reasonable and consistent regulatory program, thereby providing greater measures to prevent, mitigate, and abate potential unreasonable effects on the resource and those entities relying on that resource."

The creation of the Western CUA will benefit this multi-county region of the state. I request that the DHEC Board give this matter thoughtful consideration and vote to approve this critical proposal.

Kindest Regards,



Gary Bynker
Chairman, Aiken County Council

Enclosures

Cc: Ms. Seema Shrivastava-Patel
Mr. Rick Toomey
Mr. Charles Joyce, II
Dr. David Gillespie
Mr. Jim Creel, Jr.
Ms. Myra Reece, Director of Environmental Control
Ms. Jennifer Hughes, Assistant Director of Environmental Control



Remembering the Past, Preparing for the Future

Gary Bunker
Chairman

November 10, 2017

Mr. Allen Amsler, Chairman
South Carolina Board of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Amsler:

As you know, the United States Geological Survey is currently undertaking a thorough and comprehensive study of the availability of groundwater in Aiken County. Aiken County is a largely rural county and many of our citizens, as well as our rural water districts rely heavily upon groundwater for their drinking water. Aiken County Council recognizes the need to protect our groundwater resources for future generations and we eagerly await the results of the USGS study.

In the meantime, the Aiken County Council has adopted a resolution requesting the South Carolina Board of Health and Environmental Control designate certain portions of eastern Aiken County as a capacity use area. Attached you will find a copy of that resolution adopted on July 19, 2016. We are aware that SCDHEC is undertaking a process to determine if parts of western South Carolina should be designated as a capacity use area. We urge DHEC to complete this review as soon as possible so that a determination can be made. We believe that a capacity use designation is in the best interest of the citizens of our county and that such designation should be made sooner rather than later.

Thank you for your continued review of this issue and for your consideration of this request. Please let us know if there is any information that we can provide or if you would like to discuss this matter in any further detail.

Sincerely,

A handwritten signature in black ink that reads "Gary Bunker".

Gary Bunker, Chairman
Aiken County Council

Cc: Mr. David Wilson, Acting Director
SCDHEC

Sponsor(s) : Development Committee
Committee Referral : Development Committee
Committee Consideration Date : July 19, 2016
Committee Recommendation : Approval
Effective Date : July 20, 2016

RESOLUTION NO. 16-07-141
COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR AIKEN COUNTY

(Requesting that the Board of the South Carolina Department of Health and Environmental Control Designate Certain Portions of Eastern Aiken County as a Capacity Use Area Pursuant to Regulation R.61-113 and the South Carolina Code of Laws Section 49-5-10 and 49-5-60.)

WHEREAS:

1. Aiken County, due to its largely rural nature, relies very heavily on groundwater resources for both residential and commercial enterprises; and
2. The City of Aiken and many of the County's rural water districts draw from groundwater aquifers to serve their customers; and
3. Fresh drinking water is a precious natural resource that must be protected for future generations, economic development and agricultural use; and
4. Aiken County, like much of South Carolina, has experienced significant periods of low rainfall and even drought conditions over the past number of years; and
5. Aiken County has also seen the growth large corporate agricultural enterprises that have begun additional major withdrawals from limited groundwater sources; and
6. Section 49-5-10 and the following sections of the South Carolina Code of Laws, known as the Groundwater Use and Reporting Act, provides for a "Capacity Use Designation" by the South Carolina Department of Health and Environmental Control (SCDHEC) in areas where excessive groundwater withdrawal presents a potential adverse effect to natural resources or poses a threat to public health, safety and welfare; and
7. This Act, along with Regulation R.61-113 as promulgated by SCDHEC, provides the framework and guidelines under which SCDHEC can make a Capacity Use Designation; and
8. Recent events have given rise to concerns of citizens from eastern Aiken County and the Aiken County Council believes that a Capacity Use Designation for a part of that portion of Aiken County may be in order.

NOW THEREFORE BE IT RESOLVED BY THE AIKEN COUNTY COUNCIL THAT:


1. County Council hereby requests that the Board of the South Carolina Department of Health and Environmental Control designate the certain portion or portions of eastern Aiken County to be identified by the County Administrator upon consultation with County Council and SCDHEC as a Capacity Use Area pursuant to Regulation R.61-113 and the South Carolina Code of Laws Section 49-5-60.

Adopted at the regular meeting of Aiken County Council on July 19, 2016.

ATTEST:


Tamara Sullivan, Council Clerk

SIGNED:


Ronnie Young, Chairman

COUNCIL VOTE: Unanimous ABSTAINED: Siders ABSENT: Smith

Dear Board Members:

Please vote to approve the Proposed Western Capacity Use Area.

There are large aquifers under the coastal plain in South Carolina between the fall line which is near Interstate 20 and the coast. The aquifers are very deep at the coast and become more and more shallow as they approach the fall line which marks the end of the coastal plain.

South Carolina DNR has been keeping records of aquifer levels by the use of monitoring wells located throughout the coastal plain for decades. These monitoring wells show a long term declining trend in the aquifers of the Proposed Western Capacity Use Area. Increased population, industry, large scale agriculture and recreation as well as changing weather patterns are all contributing to these lower aquifer levels.

Challenges to our aquifers are continuing to increase. Local residential wells and long-running artesian wells have been affected when new large-scale users have placed an increased burden on the aquifers. DHEC and DNR have been working together to propose this Western Capacity Use Area which you will be voting on.

Along the coast, serious salt water intrusion into the aquifers has occurred due to pressure changes from excessive water withdrawal from the aquifers putting resident and business access to groundwater at risk. Both have benefitted from Capacity Use water management plans in these areas resulting in some recovery of the aquifers.

Large water withdrawers (over 3 million gallons per month) in the seven-county Proposed Western Capacity Use Area are currently required to register their wells with DHEC and report water usage annually. If you vote to create the Western Capacity Use Area, these large users would then need to obtain a permit (automatic for existing registered users) and report usage on a monthly basis. DHEC would be able to advise new well permit applicants on the best location and depth for new wells to reduce the chance for interference with existing users. A water management plan for the entire area which takes into account ground water as well as surface water resources can create individual plans which provide for some large users to switch back and forth between the two sources at various times of year to make the best use of the available water resources.

It has been shown that Capacity Use works in South Carolina to safeguard our precious water resources for the public welfare. We have the tools available now. DHEC has worked for two years to prepare. There is no reason to wait for a crisis as has occurred in other areas.

By being proactive now and taking a leadership position in voting for the Proposed WCUA you have the opportunity to manage this vital natural resource for the benefit of all who live and work in the area now and for those who come later as the counties grow and thrive. Thank you for your consideration of this most important matter.

Sincerely,

Anne Kiser
PO Box 422
New Ellenton, SC 29809

Dear Board Members:

Please vote to approve the Proposed Western Capacity Use Area.

There are large aquifers under the coastal plain in South Carolina between the fall line which is near Interstate 20 and the coast. The aquifers are very deep at the coast and become more and more shallow as they approach the fall line which marks the end of the coastal plain.

South Carolina DNR has been keeping records of aquifer levels by the use of monitoring wells located throughout the coastal plain for decades. These monitoring wells show a long term declining trend in the aquifers of the Proposed Western Capacity Use Area. Increased population, industry, large scale agriculture and recreation as well as changing weather patterns are all contributing to these lower aquifer levels.

Challenges to our aquifers are continuing to increase. Local residential wells and long-running artesian wells have been affected when new large-scale users have placed an increased burden on the aquifers. DHEC and DNR have been working together to propose this Western Capacity Use Area which you will be voting on.

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It has been shown that Capacity Use works in South Carolina to safeguard our precious water resources for the public welfare. We have the tools available now. DHEC has worked for two years to prepare. There is no reason to wait for a crisis as has occurred in other areas.

By being proactive now and taking a leadership position in voting for the Proposed WCUA you have the opportunity to manage this vital natural resource for the benefit of all who live and work in the area now and for those who come later as the counties grow and thrive. Thank you for your consideration of this most important matter.

Sincerely, Elizabeth D Singer

53 Rocky Hill RD
chadds Ford, PA 19317
chateaulog@gmail.com
chateaulogdriving.com
610-960-8695

Nov-April
1070 CurbChain Lane
Windsor, SC 29856

To: South Carolina DHEC Board Members
From: Leonilda Burke
Subject: Support for Proposed Western Capacity Use Area
Date: June 20, 2018

Dear Board Members:

Please vote to approve the Proposed Western Capacity Use Area.

There are large aquifers under the coastal plain in South Carolina between the fall line, which is near Interstate 20, and the coast. The aquifers are very deep at the coast and become more and more shallow as they approach the fall line which marks the end of the coastal plain.

South Carolina DNR has been keeping records of aquifer levels by the use of monitoring wells located throughout the coastal plain for decades. These monitoring wells show a long term declining trend in the aquifers of the Proposed Western Capacity Use Area. Increased population, industry, large scale agriculture and recreation as well as changing weather patterns are all contributing to these lower aquifer levels.

Challenges to our aquifers are continuing to increase. Local residential wells and long-running artesian wells have been affected when new large-scale users have placed an increased burden on the aquifers. DHEC and DNR have been working together to propose this Western Capacity Use Area which you will be voting on.

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Large water withdrawers (over 3 million gallons per month) in the seven-county Proposed Western Capacity Use Area are currently required to register their wells with DHEC and report water usage annually. If you vote to create the Western Capacity Use Area, these large users would then need to obtain a permit (automatic for existing registered users) and report usage on a monthly basis. DHEC would be able to advise new well permit applicants on the best location and depth for new wells to reduce the chance for interference with existing users. A water management plan for the entire area which takes into account ground water as well as surface water resources can create individual plans which provide for some large users to switch back and forth between the two sources at various times of year to make the best use of the available water resources.

It has been shown that Capacity Use works in South Carolina to safeguard our precious water resources for the public welfare. We have the tools available now. DHEC has worked for two years to prepare. There is no reason to wait for a crisis as has occurred in other areas.

By being proactive now and taking a leadership position in voting for the Proposed WCUA you have the opportunity to manage this vital natural resource for the benefit of all who live and work in the area now and for those who come later as the counties grow and thrive. Thank you for your consideration of this most important matter.

Sincerely,
Leonilda Burke
Windsor, SC

June 19, 2018

Board of Directors
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina

RECEIVED

JUN 21 2018

Clerk, Board of Health
and Environmental Control

Dear Members of the Board:

Writing on behalf of over 100 small family farm owners in the Oakwood/Windsor area of Aiken County, I urge you to vote in favor of designating our northwestern corner of the coastal plain the Western Capacity Use Area.

Concerns about the viability of our local domestic wells arose after new deep wells were installed by a public water utility and for large irrigation projects. My wife and I had experienced a dry private well several times during the drought in 2008. Local backyard meetings in 2015 and 2016 had neighbors sharing more recent similar problems. They were incurring expenses to repair and/or deepen wells experiencing pump burnouts and lower water levels. These meetings led to the researching of publicly-available SC DNR state-wide well data and development of the attached summary chart. This chart, which highlighted our concerns, was presented to local legislators, your legislative oversight committee, and the Aiken County Council.

The monitoring well chart clearly shows the long-term trend of declines in several Aiken County wells. This is in line a USGS finding that though "the City of Aiken was the only one of the 66 stations analyzed that has an increasing trend in precipitation. . ." there have been 100 years of declining rainfall in South Carolina. It also reflects declines in wells across all seven of the counties included in your staff's Assessment of Groundwater in the proposed Western Capacity Use Area (WCUA).

I personally attended all of the WCUA stakeholder meetings. Most often heard were irrigation users worried about changes to their way of life or access to water supplies in the future. They were assured this fifth CUA designation will not change current allocations or reporting requirements for currently-registered users. At none of those meetings did those expressing concerns present any science-based information that countered the data and conclusions found in the Preliminary Assessment.

As USGS and SCDNR have noted in their ongoing Aiken-area study, the groundwater declines shown on the attached chart and in the Preliminary Assessment "could, therefore be related more to the increasing rates of groundwater withdrawals than changes in precipitation rates ...". This new CUA designation is needed to assure our community there will be sufficient water to support all users. It also will enable the establishing a Ground Water Management Plan to ensure we have sustainable use as the area continues to grow.

Again, I urge you to heed the science. Approve this designation so we all can come one step closer to meeting the recommendation in the State's 2004 Water Plan that "the entire Coastal Plain province be designated a Capacity Use area.

Sincerely,

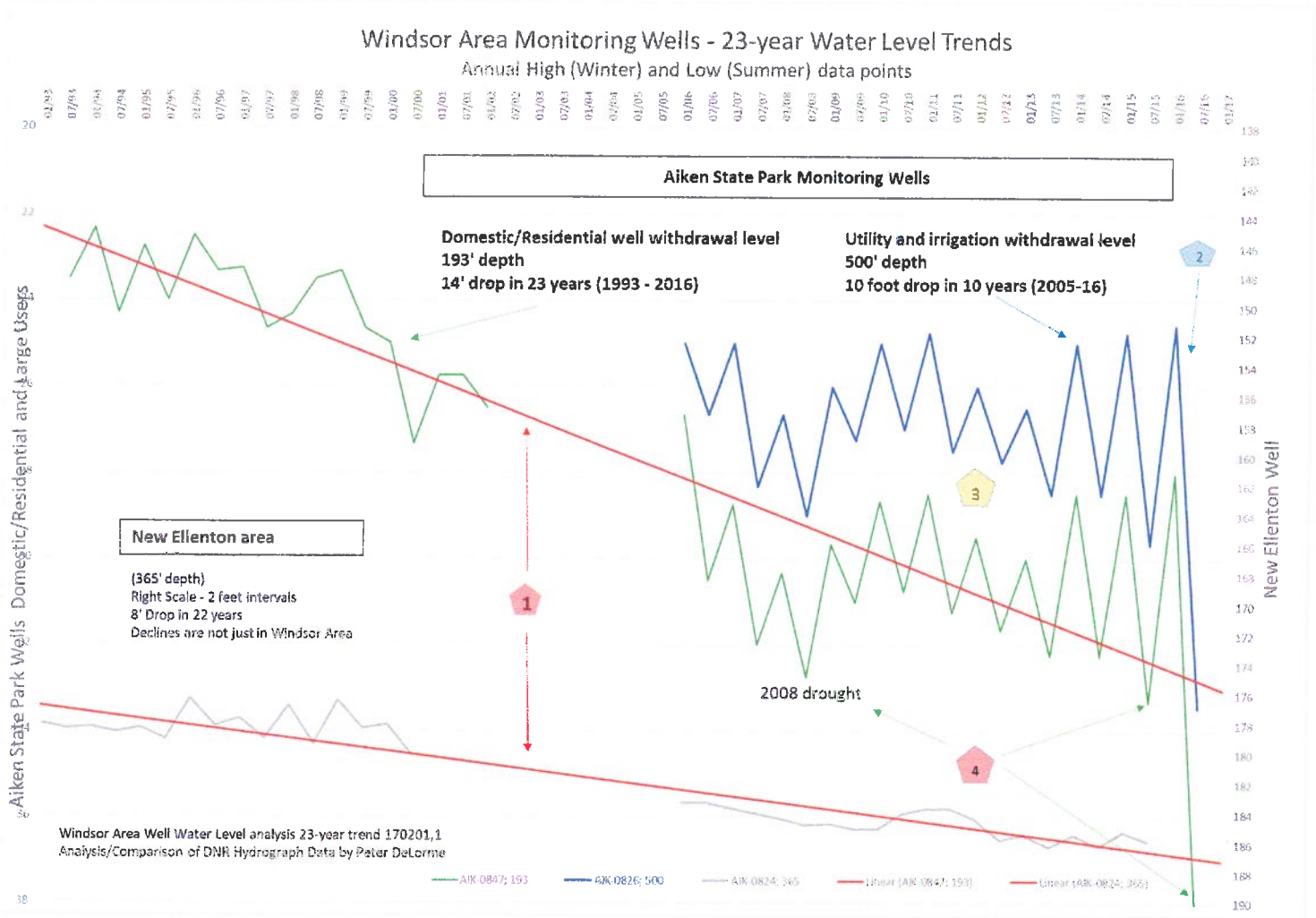


Peter De Lorme

Pastoral Advocates For Aiken County

Aiken County selected Monitoring Well Water Levels

1993 to 2016



Key Points

- 23-year trend of declines across the county, including State Park, New Ellenton, and other areas
- Most alarming to both area residents, and state hydrologists, are the dramatic 2016 declines in the spring and summer growing season months.
- Interconnectedness of shallow and deep aquifers in the Windsor area is apparent in the similar seasonal fluctuations by wells in the C-3 cluster at Aiken State Park
 - Public water utilities and irrigators withdraw at lowest aquifer level – 400 feet
 - Homeowner withdrawals are generally at 200 feet (above the large withdrawers)
 - The likely interconnectedness of the aquifers causes large withdrawals by farms and utilities to affect small homeowners – reference cluster of nearby wells with problems
- State Park summer lows are now exceeding those of the 2008 drought

W.A.T.E.R.

(Water for Aiken Through Environmental Reform)

Western Capacity Use Area – Key documents and a review of the science

1. July 19, 2016 Aiken County Council voted to request CUA designation from DHEC

- a) Presentation by Pastoral Advocates for Aiken County (now W.A.T.E.R) group to Development Committee, followed by discussion in Work Session, and final discussion and amendment during full Council regular meeting
- b) Seven votes in favor, one abstention (Siders - insurance agent to large irrigator), and one member not present (Smith)
- c) Kathy Rawls (whose district includes Aiken State Park and Oakwood/Windsor area) provided strongest support citing vanishing artesian wells in her district

2. SC DNR: [South Carolina Water Plan - 2004](#)

- a) P.97 – “To protect aquifer systems and to ensure the long-term sustainability of the ground water resources, the entire Coastal Plain province should be designated a Capacity Use Area”

3. SC DHEC: [A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg . . .](#)

- a) P.1 - Executive Summary recaps assessment supporting designation
- b) P.5 – Hydrogeologic Framework – interconnected aquifers near Windsor (Point A on chart)
- c) P.11-Aiken well # 847 – Downward trend and sudden drop in 2016 (Drop is similar in 2017 and 2018)
- d) P.18-Population and Water Use Increases - Consumption growth
- e) Throughout – all seven counties showing declines, which percentage-wise, triggered creation of four other CUAs

4. USGS/ SC DNR: [Assessment of Groundwater Availability in Aiken County SC](#)

- a) Intro provided overview and concerns
 - i) Public utilities, and Aiken city and County express concerns and provide funding since 2014
 - ii) Objective: Manage [ground water] demands and ensure high quality ground water
- b) Problem Statement is in paragraph 4
 - i) 100 years of declining rainfall in SC: An analysis of 100 years of precipitation data (1913 – 2013) from 66 climate stations across South Carolina by Mizzell and others (2014) indicated a generally decreasing trend.
 - ii) Exception is Aiken: However, the climate station at the City of Aiken was the only one of the 66 stations analyzed that had an increasing trend in precipitation of over 1 inch over all four seasons.
 - iii) Increasing use: The groundwater level declines could, therefore, be related more to the increasing rates of groundwater withdrawals than changes in precipitation rates due to changes in climate.
- c) DeLorme note: despite adequate rainfall in Aiken, summer well levels have steadily declined for past 25 years



RECEIVED

JUN 22 2018

Clerk, Board of Health
and Environmental Control

Department of Biology and Geology

21 June 2018

Statement on water use in South Carolina:

Most people in South Carolina do not believe there is a general water shortage or even that we can run out of water. Nothing could be further from the truth. Our surface waters are near depletion every 5 years or so as we go through cyclic droughts. Atlanta has come close to losing its surface water supply twice in the last ten years. Cities in the Charlotte area are having to make planning decisions based on water usage and availability. South Carolina is not exempt from the problem, but we have few if any rules at all concerning surface and groundwater use.

Surface waters are new water and very limited. Our rivers are fed by rainfall in the mountains mostly and to some extent by local runoff. In all cases, our surface waters are closely related to recent rainfall. These waters support towns, farms, pastures, wildlife, and the coastal fisheries. If one takes a close look at surface water, our economy is centered on it and dependent on it.

Groundwater is old water. It comes from the mountains where the rain seeps into the soil and slowly moves by gravity toward the ocean. It may take decades to hundreds of years for the water to move from the mountains to the coast. When we pump groundwater, we are pumping water that was rain before we were born. It cannot be replenished quickly. Groundwater use has no limitations in South Carolina; anyone and everyone can use it without getting permits or documenting how much they are using. For this reason, all water and especially groundwater should always be considered a "common good" and one that should be carefully monitored for overuse.

For this reason, groundwater is a limited resource. Before we allow unlimited access to it, we need to understand how much of it there is. Currently, no one seems to have a good idea of that. All "common goods" throughout history have been depleted or damaged by overuse usually because no one believes they are limited until it is too late. Common sense does not rule the day when it comes to using a "free" common resource; it is always a free-for-all where everyone grabs as much as they want. The result is always predictable and always tragic.

The waters of South Carolina are currently considered an unlimited common resource, free for anyone use and to whatever extent they want to use them. The result will be depletion by the greedy and economic distress for municipalities and for the state in general. If you do not believe this scenario, please just look at the problems California and Texas have had recently and are having today; look at Atlanta and northern Georgia; look at Tucson, Phoenix, Las Vegas, Charlotte, and many other cities; look at the states using the Ogallala Aquifer. Then consider how important it should be to regulate water use in South Carolina.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew R. Dyer".

Andrew R. Dyer
Professor of Biology
Washington Group Chair of Sciences
Dept. of Biology & Geology
University of South Carolina Aiken
803-641-3443
andyd@usca.edu

Create the Western Capacity Use Area

Nancy Babcock <nbinca936@gmail.com>

Sat 6/23/2018 1:06 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Why anyone would oppose establishing a western capacity use area in South Carolina's Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties is unjustifiable and would constitute an unconscionable neglect of natural resources.

We desperately need the protections that this designation would provide, and that's just for starters. As a recently arrived tax-paying resident of Aiken County I was appalled to learn—after buying my property in 2014—of the invasion of the mega farms and their unrelenting overuse of the area water supplies. The fact that ground water levels have been declining steadily and that well levels are dropping dangerously low are red flags that cannot be ignored. To do nothing here is suicide for all of these counties' residents who pay more in taxes and at substantially higher rates than these mega farms do.

The obvious question is, why would we allow these farms, and other potential future mega users, to drain our water supplies dry? What is the benefit and to whom, other than to the farms themselves?

Please! We the taxpayers in these counties need protections, starting with the designation as a Capacity Use Area!

Nancy Babcock
Windsor, SC

Petition Supporting Creation Of Western Capacity Use Area

Nancy Babcock <charlieinca@earthlink.net>

Sun 6/24/2018 10:21 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

=> Ground water levels have been declining for 23 years in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties

=> Use of ground water has been steadily increasing in this northwestern area of the coastal plain, where the aquifers are also the shallowest

=> Precipitous drops in summer well levels have occurred recently where new wells have been drilled. In 2016 one well in the Oakwood area of Aiken County dropped 23 feet during the summer, a far greater drop than that of other area wells, some of which fell 3 or more times their usual summer drops

=> Approving the designation will trigger the development of a Ground Water Management Plan. The Plan will serve several purposes, including:

1. Defining how to manage new withdrawal requests (be they industrial, Public Utility, or Irrigation)
2. Guiding efforts to move toward sustainable use of our renewable, yet limited, ground water resource

--

Ms Nancy Babcock
charlieinca@earthlink.net

Petition Supporting Creation Of Western Capacity Use Area

Charles Davis <chas2labs@bellsouth.net>

Sun 6/24/2018 10:39 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

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Mr Charles Davis
chas2labs@bellsouth.net

Petition Supporting Creation Of Western Capacity Use Area

SHERRI DOLAN <sherri.dolan@tds.net>

Sun 6/24/2018 10:31 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms SHERRI DOLAN
sherri.dolan@tds.net

Petition Supporting Creation Of Western Capacity Use Area

Susan Dougherty <pauldougherty@att.net>

Sun 6/24/2018 4:26 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Mrs Susan Dougherty
pauldougherty@att.net

Petition Supporting Creation Of Western Capacity Use Area

Mary Duxbury <Msdux@live.com>

Sun 6/24/2018 11:20 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Mrs Mary Duxbury
Msdux@live.com

Petition Supporting Creation Of Western Capacity Use Area

David Forney <Dgforney@gmail.com>

Sun 6/24/2018 11:10 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Mr David Forney
Dgforney@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Carol Funderburgh <Pioniar18@gmail.com>

Sun 6/24/2018 10:37 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Carol Funderburgh
Pioniar18@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Irene Gillis <Ponylady2017@gmail.com>

Sun 6/24/2018 4:58 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Irene Gillis
Ponylady2017@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Denis Glaccum <denis@plantationfieldht.com>

Sun 6/24/2018 10:25 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Mr Denis Glaccum
denis@plantationfieldht.com

Petition Supporting Creation Of Western Capacity Use Area

Rebecca Gutierrez <rebecca@aikenhomesource.com>

Sun 6/24/2018 1:12 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Rebecca Gutierrez
rebecca@aikenhomesource.com

Petition Supporting Creation Of Western Capacity Use Area

Jane Hostetter <janeho@bellsouth.net>

Sun 6/24/2018 2:23 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Jane Hostetter
janeho@bellsouth.net

Petition Supporting Creation Of Western Capacity Use Area

Anne Kiser <grl4ster@gmail.com>

Sun 6/24/2018 12:12 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

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--

Ms Anne Kiser
grl4ster@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Hugo Krispyn <Hugo@swampvox.com>

Sun 6/24/2018 6:19 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Mr Hugo Krispyn
Hugo@swampvox.com

Petition Supporting Creation Of Western Capacity Use Area

patricia mcnamee <crowsnestfarm1@gmail.com>

Sun 6/24/2018 4:28 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms patricia mcnamee
crowsnestfarm1@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Barbara Mettle <jbmettle@msn.com>

Sun 6/24/2018 6:43 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Barbara Mettle
jbmettle@msn.com

Petition Supporting Creation Of Western Capacity Use Area

ann mitchell <almitchell@gforcecable.com>

Sun 6/24/2018 1:29 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

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--

Ms ann mitchell
almitchell@gforcecable.com

Petition Supporting Creation Of Western Capacity Use Area

Margery Shelton <Mgshelt@gmail.com>

Sun 6/24/2018 12:30 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

=> Ground water levels have been declining for 23 years in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties

=> Use of ground water has been steadily increasing in this northwestern area of the coastal plain, where the aquifers are also the shallowest

=> Precipitous drops in summer well levels have occurred recently where new wells have been drilled. In 2016 one well in the Oakwood area of Aiken County dropped 23 feet during the summer, a far greater drop than that of other area wells, some of which fell 3 or more times their usual summer drops

=> Approving the designation will trigger the development of a Ground Water Management Plan. The Plan will serve several purposes, including:

1. Defining how to manage new withdrawal requests (be they industrial, Public Utility, or Irrigation)
2. Guiding efforts to move toward sustainable use of our renewable, yet limited, ground water resource

--

Ms Margery Shelton
Mgshelt@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Lisa Singer <Chateaulog@gmail.com>

Sun 6/24/2018 6:44 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

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--

Ms Lisa Singer
Chateaulog@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Linda Stebbins <stebbinscarter@gmail.com>

Sun 6/24/2018 8:18 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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--

Ms Linda Stebbins
stebbinscarter@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Price Story <P_story@bellsouth.net>

Sun 6/24/2018 5:41 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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--

Ms Price Story

P_story@bellsouth.net

Petition Supporting Creation Of Western Capacity Use Area

Diane Toth <Ziptothepage@gmail.com>

Sun 6/24/2018 11:04 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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Ms Diane Toth
Ziptothepage@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Grace Vance <twins1@gmail.com>

Sun 6/24/2018 1:55 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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Ms Grace Vance
twins1@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Steven Warden <Stevenwarden@hotmail.com>

Sun 6/24/2018 2:11 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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--

Mr Steven Warden
Stevenwarden@hotmail.com

Petition Supporting Creation Of Western Capacity Use Area

Deborah Winall <debbie.winall@gmail.com>

Sun 6/24/2018 10:32 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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--

Ms Deborah Winall
debbie.winall@gmail.com

Petition Supporting Creation Of Western Capacity Use Area

Julie Worley <jbw2590@gmail.com>

Sun 6/24/2018 12:53 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

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--

Ms Julie Worley
jbw2590@gmail.com

From: diana <sfgsfg@aol.com>
To: sfgsfg <sfgsfg@aol.com>
Subject: Aiken County Residents in Support of DHEC CUA
Date: Mon, Jun 25, 2018 12:09 pm

RECEIVED

JUN 25 2018

Clerk, Board of Health
and Environmental Control

DATE: June 25, 2018
TO: Chairman Mark Elam and Board, DHEC
FROM: Diana C. Crowley
RE: County-wide Support for CUA

Attached please find signatures from a cross section of residents who believe that we need to begin planning how to protect our water resources. You will also find two signatures from farmers in Saluda who sell at Aiken's Farmers Market who insisted on signing because of the water problems ongoing with the new production plan in that county.

A number of residents with knowledge of the Edisto River, questioned if the State recognizes that as a "Blackwater System" special considerations may be required. We refer you to the State of Florida and their guidelines.

And finally, those signing this letter regard the Edisto as "money in the Bank" in terms of tourism, real estate, and sport. We hope that while some signatures are less than perfect, you will see that they range across neighborhoods and professions.

Respectfully,


Diana C. Crowley

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

RECEIVED

JUN 25 2018

Clerk, Board of Health and Environmental Control

We understand that the State of South Carolina DHEC Board is being asked to approve a plan to help Aiken County and six other counties protect their access to water for all users. The recent example in Windsor and the unlimited use of both the river and groundwater by commercial farms causes Aiken residents to ask that a plan be put in place.

As you know, nearly 70% of Aiken County has no protective zoning and no charges for water use by commercial enterprises. At present the Edisto River is undergoing increased demands by both agriculture and urban users. Of equal concern is Aiken County's wealth of streams, springs, and ponds which remain unprotected.

We ask that the State of South Carolina approve water resource management plans and that Aiken County Council actively support this important first step.

Respectfully,

June 9th 2018 Diana Dowley (Phil G) 1202 S. Boundary, Aiken 29801 *SPF 57g/a aol.com*
Michelle 532 Summer Lakes 29805

June 9th 220 Pleasant Oak Dr. Aiken SC 29803

6-9-18 1056 Implement Rd. Aiken 29803

- June 9, 2018 Suzanne & Art Bremer 1746 Citation Dr 29803
bremersuz@gmail.com

June 9, 2018 705 Foxhollow cud RD, Aiken 29805 *A*

(Sydney Bozeman)
Scott Macklin 4609 Charleston Hwy Windsor, SC 29856

SCMACKLIN@gmail.com

SMacklin

MICHAEL HERTZBERG 318 PASCALIS PL. AIKEN 29803

hertzbergengineering@gmail.com *Michael Hertzberg*

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

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(date, print name, signature, address, email/phone)

- 6/13/18 Rose O. Hayes, 616 COLLETON AVE SE, AIKEN 29801
ROSE O. HAYES roseohayes@aol.com
- 6/15/18 ALICE R. KNOWLES, 504 BERRIE RD, AIKEN, SC 29801 803 649-2626
Alice R Knowles
- Cathy Lee 671 Gooseneck Rd 6419002 Cathy Lee
- Ron Lee 671 Gooseneck Rd 6419002 Ron Lee
- Dan & Denny Raschel 3211 Hidden Mountain Lane Aiken SC 29801 645-5983
- Kevin & Charlotte Falcon 301 Wilderness Rd 649-1424 29801

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(date, print name, signature, address, email/phone)

Dana & Jim Bevel 1389 Poplar Spring Rd Aiken SC 29805

Mark & Marie Sturkie 3664 Old 96 Indian Tr Wagener SC 29164

Robin & Kenneth Leach 2296 Sweet Gum Rd Aiken 29805

Michelle Eiter - 338 Beaufort St, SE, Aiken, SC 29801

ELISSA BOISVERT 481 GREENWICH DR 29803

DYLAN BOISVERT 481 GREENWICH DR ^{AIKEN, SC} 29803

Gail Wilkinson 1614 Powderhouse Rd 29803 6/21/18

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

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(date, print name, signature, address, email/phone)

6/21 DIANA CROWLEY, P., 322 Maine Rd, Aiken SC 29803 scgsc@aol.com

6/21 Ala R Knorr, 504 Berair Rd, Aiken, S.C. 29801

6/21 Thomas Dilston 4 Appa 2005A WAY Warrentonville SC 29851

James Maxwell 20 Emerald Reg Lane SC 29803

V. HILLS 614 TIMMAMAN RD AIKEN SC 29801

6/23 Andrew Greer 272 Pearl Lane W. Hilton SC 29853

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

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(date, print name, signature, address, email/phone)

6/22/18 Doug Crowley, 1202 S. Berkeley, Aiken, 29801

Anna W. Zwick Anna W. Zwick 5418 Forest Rd 29801

June 21, 2018 Linda Bowen

484 Powderhouse Rd.
Aiken, S.C. 29801

6/23/18 Christine A. Cato 418 Berrie Rd SW Aiken, SC 29801
stine515@aol.com

Valerie Freeman 134 Hunting Hills Dr Aiken, SC 29801
5044 4th Pl / Edisto 29801

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6/23/18 Jan Hadden 1219 South Boundary Ave, Aiken 29801
6/23/18 Kenny L. Taylor Keweenaw, 1219 S. Boundary 803-474-3453
6/24/18 John Haddon 1219 South Boundary Ave SC 29801
6/24/18 Ernie Black 3046 Hwy 70 Barnwell SC 29812
6/22/18 Mike Heath 308 Northwood Dr. Aiken, SC 29803
3256 Charleston Highway Aiken, SC 29801
6-23-18 Sam Stevens 714 Wrightmill Rd Aiken 29801

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(date, print name, signature, address, email/phone)

Bill Wright 669 Kensington Ct Aiken, SC 29803

6/21/18 Dawn Gillas Dawn Gillas 1042 Woodland Dr., New Ellenton

6/21/18 Betty L. Gillas, 1042 Woodland Rd, New Ellenton SC

John Gustafson 140 Oxnard Cir, Aiken, SC 29803 29806

6/21/18 Peri A. Stimp 245 Newberry St, NW 29801

Kate Worman 330 Beaverfoot St SE

29801

South Fork Edisto Association

RECEIVED

JUN 25 2013

Clerk, Board of Health and Environmental Control

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(date, print name, signature, address, email/phone)

843-391-0141

6-22-18 ALBERTA COOK - Alberta Cook, 294 Moore Rd, Aiken SC 29805

6-22-18 CATHERINE BURKE C Crawford Farms 118 Parrish Rd Ward, SC 29166 *
* markets and sells in Aiken County

6-22-18 Jane Stephens ^{Jane Stephens} 10 Wedgewood Ct. Aiken SC 29803 jstephens.sabcs@gmail.com
Tiger berry Farms 292 Talbatha Church Rd Aiken SC 29803

6-22-18 Bill Mackey - 101 Century Lane Aiken SC 29803 -

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

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Ellen M. Martin P.O. Box 39 Windsor SC 29857 *Ellenmack@wdl.com*
Tom Cournoyer 1056 Implement Rd, Aiken 29803 *ETC 3PALMUTTO@gmail.com*

John (Aunt) 140 Occourt Ln NW Aiken SC 29801
Joe Tando 207 PEBBLE LANE, Aiken, S.C.
William Edward Sanders 803-645-9642

Jan Fleetwood 171 York St SE Aiken, SC 29801
Steve Hurt 1427 South Boudry Aiken 29801

TRIFE

AIKEN COUNTY RESIDENTS IN SUPPORT OF DHEC WATER RESOURCE MANAGEMENT PLAN TO PROTECT RIVERS AND GROUNDWATER FOR THE BENEFIT OF THE COMMUNITY

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(date, print name, signature, address, email/phone)

Murphy Lybrand 6/23/2018 *
PO Box 1481 Wadener SC 29164

* Murphy Lybrand

Petition Supporting Creation Of Western Capacity Use Area

Cathy Brock <cathymbrock@gmail.com>

Mon 6/25/2018 12:55 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

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--

Ms Cathy Brock
cathymbrock@gmail.com



June 25, 2018

Chairman Mark Elam
And
Board Members
Attention and C/O: Ms. Lisa Lucas, Clerk of the Board
South Carolina Department of Health and Environmental Control
2600 Bull St.
Columbia, SC 29201

Re: Comments in Support of a Capacity Use Area Designation on Groundwater Usage in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties a.k.a. the Western Capacity Use Area.

Dear Chairman Elam and Board Members:

I represent Concerned Citizens Safeguarding South Carolina Water ("Concerned Citizens). The purpose of this letter is to wholeheartedly endorse the adoption of the proposed Western Capacity Use Area (CUA), which is under consideration by the South Carolina Department of Health and Environmental Control Board ("Board").

Enclosed please find the Concerned Citizens' Statement of Position with respect to this matter, and accept the Statement of Position as comments of the organization. We previously submitted the enclosed document and other comments at a public meeting regarding the proposed Western CUA held in February 2018. For your convenience and consideration, they are submitted again today. The comments are still timely and relevant and provide compelling support for the Western CUA designation. We would encourage you to review them and immediately designate the Western CUA.

Thank you for your kind attention. If you have any questions or require further assistance, please do not hesitate to let us know how we can help. A healthy, thriving water supply is critical to the overall wellbeing of the state and its residents.

Sincerely,

Dionè C. Carroll, Esq.

Enclosure

STATEMENT OF POSITION

February 8, 2018

Concerned Citizens Safeguarding South Carolina Water (“CCSW” or “Concerned Citizens”) is an association of South Carolina residents dedicated to the protection and preservation of South Carolina’s water resources and its precious natural systems.

It is the position of CCSW that the designation of the Western Capacity Use Area, including but not limited to Aiken County, South Carolina, is a critical immediate step necessary to promote the protection of South Carolina water resources and the State’s important natural systems.

CCSW is represented by Carroll Law Offices P.A., and according to Dione` Carroll, Esq., “without this critical designation, regulators would be severely handicapped in their ability to begin to address the imminent water shortage issues in Aiken County.” The CCSW position on groundwater is confirmed by the findings of SCDHEC and SCDNR as follows:

The South Carolina Department of Health and Environmental Control (Department), in cooperation with the South Carolina Department of Natural Resources (SCDNR), has been evaluating groundwater conditions in the western Coastal Plain region of South Carolina in a series of investigations. SCDNR has previously recommended (SCDNR, 2004) the entire Coastal Plain province should be designated a Capacity Use Area in order to protect aquifer systems and ensure long-term sustainability of the groundwater resources. On July 19, 2016, Aiken County Council requested that portions of Aiken County be designated as a Capacity Use Area.

The Department has reviewed previously published reports on local groundwater conditions by the SCDNR and USGS in conjunction with reported groundwater withdrawal data for the counties of this region (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg) to assess the current groundwater conditions in the area. This review indicates that water level declines in the aquifer systems of concern have been influenced by an increase in population, public water supply use and agricultural activities using groundwater and a series of long-standing droughts that have reduced recharge to the aquifer systems.

....

The South Carolina Department of Health and Environmental Control (Department) received a formal request on July 19, 2016 from Aiken County Council to investigate and designate a Capacity Use Area within eastern Aiken County, South Carolina. Section 49-5-60 of the Groundwater Use and Reporting Act states in part that... “In the state where excessive groundwater withdrawal present potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source... the board, after notice and public hearing...shall designate a capacity use area.” The notice and public hearing must be conducted such that local government authorities, groundwater withdrawers, or the general public may provide comments concerning the capacity use designation process. A Capacity Use Area must be designated by the board based on scientific studies and evaluation of groundwater resources and may or may not conform to political boundaries. Designation as a Capacity Use Area requires groundwater withdrawers within the

Capacity Use Area to apply for and obtain a permit from the Department.

SCDHEC and SCDNR Report, A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina, May 2017.

The connection between groundwater and surface water is very significant in portions of South Carolina. CCSW further supports immediate measures to address the critical surface water shortfalls experienced by the Edisto River. And, we support and encourage prompt stakeholder consultation and water resource planning efforts currently in development for the entire State of South Carolina.

For questions, please feel free to contact Dione` Carroll, Esq. at (803) – 514-2557.

City of
Aiken
"A place like no other..."

214 Park Avenue SW
P.O. Box 1177
Aiken, SC 29802-1177



www.cityofaikensc.gov

RECEIVED

JUN 18 2018

**Clerk, Board of Health
and Environmental Control**

Rick Osbon
Mayor

803-645-2833

Fax 803-642-7646

rosbon@cityofaikensc.gov

June 12, 2018

Chairman Mark Elam
Attention: Lisa Lucas, Clerk of Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Mr. Elam:

I'm writing in regards to the proposed Western Capacity Use Area (CUA) that is under consideration by the South Carolina DHEC Board. The City of Aiken is supportive of this initiative, and it will be in the best interests of the citizens of the City of Aiken to be included in the Western CUA.

I echo the conclusion of the "Preliminary Assessment of the Groundwater Conditions" report produced by DHEC and DNR in May 2017 that stated: "It is appropriate to incorporate the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg as the Western Capacity Use Area ... under one reasonable and consistent regulatory program, thereby providing greater measures to prevent, mitigate, and abate potential unreasonable effects on the resource and those entities relying on that resource."

The creation of the Western CUA will benefit this multi-county region of the state. I request that the DHEC Board give this matter thoughtful consideration and vote to approve this critical proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick N. Osbon", is written over a faint, circular official stamp.

Rick N. Osbon
Mayor

June 22, 2018

Chairman Mark Elam and Members
Board of South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Mr. Chairman and Members:

We are writing from Aiken County to express our support for DHEC's Western Capacity Use Area ("CUA") and to encourage both DHEC and the State to recognize the critical underpinning of water management in ensuring both human and economic health.

This new seven county water management plan will complement the State's similar efforts in other parts of South Carolina which have met with success. Aiken County is in immediate need of protection for the following reasons:

first, the county has thousands of acres of clear cut timberland owing to changes in tax treatment of forestry companies. This land will continue to attract commercial agriculture and will place heavy demands on both surface and aquifer water resources.

second, Aiken County has committed to developing I-20 which stretches across the vital headwaters, streams, and aquifer which form the South Fork of the Edisto. Without the careful management provided by the CUA downstream impacts may be felt for hundreds of miles including the City of Aiken which draws from this watershed.

Administratively, the Board should support the CUA to improve Agency effectiveness. Given the split of responsibilities between DNR and DHEC, this plan will prove an effective tool in coordinating activities between these agencies. It will also provide consistency across the State on water policies allowing for better economic growth.

Sincerely,

Diana C. Crowley, Outreach
South Fork Edisto Association, 803.474.4373/info@southforkedisto.com

Petition Supporting Creation Of Western Capacity Use Area

Claudia DeLorme <cwdelorme@bellsouth.net>

Mon 6/25/2018 4:48 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

=> Ground water levels have been declining for 23 years in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties

=> Use of ground water has been steadily increasing in this northwestern area of the coastal plain, where the aquifers are also the shallowest

=> Precipitous drops in summer well levels have occurred recently where new wells have been drilled. In 2016 one well in the Oakwood area of Aiken County dropped 23 feet during the summer, a far greater drop than that of other area wells, some of which fell 3 or more times their usual summer drops

=> Approving the designation will trigger the development of a Ground Water Management Plan. The Plan will serve several purposes, including:

1. Defining how to manage new withdrawal requests (be they industrial, Public Utility, or Irrigation)
2. Guiding efforts to move toward sustainable use of our renewable, yet limited, ground water resource

--

Ms Claudia DeLorme
cwdelorme@bellsouth.net

Capacity Use Area Designation for Aiken County, SC

Debbie Dixon <dldixon123@yahoo.com>

Mon 6/25/2018 9:13 AM

To: delinj@dhc.sc.gov <delinj@dhc.sc.gov>; Berezowska, Amira M. <berezoa@dhec.sc.gov>;

To Whom It May Concern:

It is imperative that Aiken County be designated a Capacity Use Area so that the citizens of our great State and County have the water to use in the future. The mega farms are a detriment to our continuing to have water and be able to attract further industry and businesses that will need water to operate. New families will not move to the State if we don't have water!

Check the records in New Mexico to see how the Woody's left their water supply - NONE!!!

They are a deterrent to our way of life and should never have had the red carpet rolled out to them. We are tax paying citizens who will stay in this area if we have water. I really don't want to have to convert salt water when we have to pump the ocean for use to have water.

The Edisto River should also be preserved - it IS the longest black river in the US and maybe the world. Something to be proud of but let the farmers drain it and oops, it's gone.

Thanks for listening to one disgruntled neighbor of the farmers who have had their way of life disrupted by these megal farms.

Sincerely,
Debbie Dixon
Phone 803.645.2055



June 25, 2018

Robert Devlin
South Carolina Department of Health
and Environmental Control
Bureau of Water
2600 Bull Street
Columbia, South Carolina 29201

In re: Proposed Designation of Western Capacity Use Area

SENT VIA UNITED STATES POSTAL SERVICE

Dear SCDHEC Board Members:

On behalf of stakeholders in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, Edisto Riverkeeper kindly requests your vote of approval for the designation of the Western Capacity Use Area in South Carolina. We believe that this designation is the first step in taking proactive measures maintain water quantity security and ensuring that future generations also have equal access to water resources.

South Carolina Department of Natural Resources (DNR) has maintained records of aquifer levels throughout the coastal plain for decades. These records show a long term declining trend in the aquifers of the proposed Western Capacity Use Area. Increased population, industry, large scale agriculture, recreation, as well as changing weather patterns are all contributing to lower aquifer levels. Challenges to our aquifers are only continuing to increase. Individual residential wells as well as natural artesian wells have shown the effects of the increased stress to the aquifer levels that new large-scale users have caused. Threats to aquifer levels were identified along the coast, with the response to such being the designation of four individual Capacity Use Areas (Pee Dee, Trident, Waccamaw, and Low Country).

Excessive water withdrawers, which constitutes withdrawal of 3 million gallons or more per month in the proposed Western Capacity Use Area are currently required to register their wells with DHEC and report water usage annually. If you vote to create this new Area, these large withdrawers would then

be required to obtain a permit and report usage on a monthly basis. DHEC would then be able to advise new well permit applicants on the best location and depth for new wells to reduce the change for interference with existing users. A water management plan for the entire area, which takes into account ground and surface water, will create individual plans which provide for some large users to switch back and forth between the two sources at various times of the year to ensure best use of available water resources.

It has been shown that Capacity Use works in South Carolina to safeguard our precious water resources for the benefit of the public and ensuring future water security. The tools are available now to do this for the seven counties within the proposed Western Capacity Use Area, which DHEC has worked for two years to prepare. There is no reason to wait any longer to establish this Area. Taking proactive measures now will benefit all.

We hope that this letter of support, as well as those submitted by others will in fact identify the importance and dire need of this designation, as protecting and conserving the most precious resource that the State of South Carolina holds inspire others like you to join our efforts of protecting this South Carolina jewel! Your support and vote in favor of establishing this designation will in turn show that you support ensuring that future generations will also be able to utilize water resources in South Carolina.

Should you have any questions or concerns, please do not hesitate to contact me. Your consideration of this important matter is greatly appreciated.

Warmest Regards,



Meg Morgan Adams
Executive Director | Edisto Riverkeeper

Petition Supporting Creation Of Western Capacity Use Area

Nancy Mullen <Nancytuckermullen@gmail.com>

Mon 6/25/2018 1:22 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

=> Ground water levels have been declining for 23 years in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties

=> Use of ground water has been steadily increasing in this northwestern area of the coastal plain, where the aquifers are also the shallowest

=> Precipitous drops in summer well levels have occurred recently where new wells have been drilled. In 2016 one well in the Oakwood area of Aiken County dropped 23 feet during the summer, a far greater drop than that of other area wells, some of which fell 3 or more times their usual summer drops

=> Approving the designation will trigger the development of a Ground Water Management Plan. The Plan will serve several purposes, including:

1. Defining how to manage new withdrawal requests (be they industrial, Public Utility, or Irrigation)
2. Guiding efforts to move toward sustainable use of our renewable, yet limited, ground water resource

--

Ms Nancy Mullen
Nancytuckermullen@gmail.com

Aiken Land Conservancy

June 25, 2018

Mark Elam, Chairman
SC Board of Health and Environmental Control
2600 Bull Street
Columbia SC 29801

RE: Proposed Western Capacity Use District

Dear Chairman Elam:

I am the President of the Aiken Land Conservancy, Inc. (ALC), a nonprofit organization committed to the protection of Aiken County's precious natural resources and historic character. Since its inception in 1991, ALC has worked with landowners to protect close to 3500 acres of open space, forested land, water resources and working family farms.

The Aiken Land Conservancy urges the Board to take action and approve the creation of the Western (Water) Capacity Use Area, which would include Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties.

Aiken County's two principal watersheds—Shaw's Creek and the Edisto River—are both vital sources of recreational opportunity for Aikenites and their families. In addition, the Shaw's Creek watershed is a primary source (and backup source) of drinking water for Aiken. In fact, the City is developing a voluntary conservation protection program for the Shaws Creek Watershed with the assistance of the Aiken Land Conservancy and other stakeholders to protect the areas buffering Shaw's Creek to ensure the quality of drinking water for its citizens.

We are alarmed that both water quality and water quantity in Aiken County has been and is being affected by unmanaged growth (nearly 70% of Aiken County has no protective zoning and no charges for water use by commercial enterprises) and by the unlimited and unmonitored withdrawal of both river and groundwater by large commercial farms.

Therefore, the creation of the Western Capacity Use Area will establish an important tool in understanding the impacts of residential and commercial growth on our water supply by ensuring that large withdrawals of surface and groundwater by commercial enterprises are monitored and reported to DHEC. The ability of the City and the County to appropriately plan for future contingencies in the availability of clean drinking water will be severely limited without accurate and reliable data regarding the impact of substantial water withdrawals from the surface and groundwater sources that provide that water.

Chairman Elam
June 25, 2018
Page 2 of 2

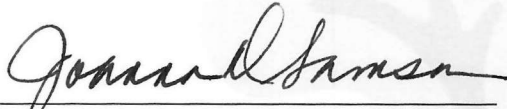
Moreover, creation of the Western Capacity Use Area does not impose material hardship or restrictions on commercial enterprises—it simply establishes a reporting system for significant withdrawals from the surface and groundwater. The City and the County's need to ensure the availability of clean drinking water for its citizens far outweighs the insignificant burden on commercial enterprises to report their water withdrawals.

We are asking for DHEC to approve the creation of the Western Capacity Use Area to help the City and County of Aiken appropriately plan for the availability of clean drinking water for its citizens in the future. Moreover, the creation of the Western Capacity Use Area will afford the citizens of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties the same opportunity to monitor their significant water withdrawals as the those counties included in the PeeDee, Lowcountry, Trident and Waccamaw Capacity Use Areas already established by DHEC.

We believe that the creation of the Western Capacity Use Area will help ensure the viability of Aiken County as a place where businesses can thrive and citizens can work and raise their families, which will *not* be possible without the availability of clean drinking water to support those activities.

Thank you,

AIKEN LAND CONSERVANCY, INC.



Joanna Dunn Samson, President
Board of Trustees
(803) 522-1300



South Carolina Farm Bureau Federation
PO Box 754 • Columbia, SC • 29202-0754
803.796.6700 • Fax 803.936.4496
www.scfb.org

June 25, 2018

Mr. Rob Devlin
SC Department of Health, Environmental Control
2200 Bull Street
Columbia, SC 29201

Dear Rob,

Historically, the South Carolina Farm Bureau (SCFB) has been supportive of the Pee Dee, Waccamaw, Trident, and Low Country Capacity Use Areas managed by DHEC since science dictated their necessity; however, it is not possible at this time to give that same support to the Proposed Western Capacity Use Area.

The SCFB position has always been that we will support what science dictates. This is why SCFB has been an active participant in the many conversations and meetings held by DHEC and DNR about the ongoing efforts to update the 2004 State Water Plan. Currently, South Carolina is investing considerable resources studying this very issue. DNR, DHEC, and Clemson PSA are all working on surface water basin models as well as evaluating current water usage. The federal government, through the United States Geological Survey, in partnership with our State, is also working to determine current ground water resources and updating the groundwater model for the coastal plain. However, this work is not yet complete.

If policymakers determine it is necessary to implement a new capacity use area, it is paramount these decisions are made after the work of updating the 2004 State Water Plan is complete, all of the facts are reviewed, and public input is provided rather than the genesis for more government regulatory oversight being a community conflict which began in Aiken County.

It is well known, and even cited within the report generated by DHEC and DNR -- A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina¹ -- that the consideration of a new capacity use area arose from a request by the Aiken County Council back in July 2016 because of the community

¹ See pages 1-2 of A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties, South Carolina, May 2017, <http://www.scdhec.gov/Library/CR-012038.pdf>

conflict resulting from Walthers Farms developing a track of land for agricultural use beginning in 2013 within Aiken County.²

For SCFB to be supportive of the creation of a new capacity use area, it has to be based on science and the scientific data has not been fully collected yet. This is so important because there must be good cause to opening up additional family-farms to the difficulties associated with obtaining a groundwater permit. The difficulties farmers may face include potential appeals resulting in thousands of dollars spent on legal fees and time spent in court rather than the field, the uncertainty of presenting an economically feasible business plan to present to agricultural lenders when the permit is only good for five-years and not guaranteed for renewal, insufficient water allocation, and inflexibility of a regulatory program that does not take into account the uniqueness of agricultural water use.

The very nature of how this proposed capacity use area process even began highlights the threat agricultural users will face of appeals of their permits. DHEC lawfully deciding to permit/register agricultural operations is being used by opponents of agriculture in this State to attack agricultural operations. While a groundwater permit has yet to be overturned through the administrative appeals process, it is not without due concern that one will be appealed in the near future given the current litigious climate agricultural operations are facing. This is particularly a concern since who can appeal a permit is so broadly defined in statute. According to the Groundwater Use and Reporting Act, “[a] person or entity aggrieved by the department’s decision on any permit application or revocation pursuant to this section may request a contested case hearing.” SC Code Ann. § 49-5-100(H). This opens up a permit to being challenged virtually by anyone –a scenario that has already played out multiple times as it related to the poultry permitting process prompting the General Assembly better defining who has standing to challenge animal agricultural facility permits this past legislative session.³ When a permit is challenged it costs the State in legal fees defending DHEC’s decision, and it costs the farmer in legal fees protecting their own interest in the process as well as time they will not be able to farm which could prevent them from making any money that growing season if their access to water is being held up in court. This is just one reason why the decision to open up additional farmers to the threat of litigation cannot be taken lightly and must be only as a last resort to protect our natural resources when necessary as dictated by science.

Additionally, groundwater permits are only good for a mere five years creating additional problems for the family-farms of South Carolina. First, when determining the renewal of a permit, DHEC uses the historical data of the past permitted five years to determine a suggested amount to permit in the subsequent five years. This is problematic because it is not long enough a time period to accurately capture the amount of water an agricultural operation may need. Farmers only use irrigation when they absolutely need it which means in times of drought they will need more and times of rain they will use less from an aquifer. Five years of drought or five years of heavy rain fall could inaccurately skew the data leaving a user with less water permitted for use and/or water over-allocated to one user when it could be used for another user. Secondly, the five-year period of a permit is not long enough a time to

² See “DHEC to consider capacity use designation for Aiken County” by Christina Cleveland, Aiken Standard, May 26, 2017, https://www.aikenstandard.com/news/dhec-to-consider-capacity-use-designation-for-aiken-county/article_6ebede90-4265-11e7-b0ec-5f218676766f.html.

³ See Act 139, March 12, 2018 – An act changing the animal agriculture facilities permitting laws to make it more difficult to appeal those permits after years of bad faith appeals tied up poultry growers in court, costing them thousands in legal fees, and ultimately stopping economic growth in South Carolina.

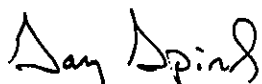
provide the security an agricultural bank lender may need to provide a loan to a farmer to be able to afford the many input costs and investments necessary to grow a crop yearly. The cost of irrigation equipment is very high and it may take around 15 years before a farmer sees a return on such a high investment. Without a guarantee that a farmer will have the water they need over the life of a loan and to make it financially worth the investment, it will be harder for a farmer to obtain the necessary loans to plant their crops. Business decisions, not just in agriculture, are made forecasting out far longer than a mere five years. This flaw in the current groundwater permitting process needs to be addressed before more agricultural users are subject to the uncertainty created by having to obtain a permit.

Finally, the groundwater permitting structure does not take into account the uniqueness of agricultural water use compared to other uses. Unlike other users of groundwater, agricultural water use is only seasonal and only used when a crop is not getting the water it needs from rain. The majority of farmers are not pumping water to use every day or even every month. Agricultural water use is intermittent and infrequent and only during the growing season. This allows an aquifer to recharge when used for irrigation. This distinct difference in use is not accounted for within the regulatory structure for groundwater use. An agricultural user of water is not making widgets that can just be stopped when DHEC asks everyone to reduce water amounts per groundwater regulations. Crops need a specific amount of water and often that is in times when rain is at the least and water tables are at their lowest. Without the right amount of water on a crop, it dies and both farmer and consumer loses. This is a fundamental flaw with the groundwater permitting laws that further highlight why placing more family-farms under this regulatory structure should only be done as a last resort to protect this natural resource as dictated by science.

While SCFB appreciates how thoroughly DHEC has worked engaging community stakeholders and how open they have been throughout this process, we need to be sure science has dictated whether to consider additional government regulation in the proposed western capacity use area rather than the concentrated efforts of an upset community to create problems for a specific type of farm. Agribusiness is the #1 industry here in South Carolina with an economic impact of about \$42 billion. This large economic impact is from the combined efforts of thousands of family farms across the State within our rural districts, and any decision that may negatively impact their ability to feed, fuel, and clothe South Carolinians must be made with the utmost care and only when based on science.

These comments reflect the current position of the South Carolina Farm Bureau, but we are committed to continued dialogue with DHEC about the issues we have raised prior to submitting our official comments at the DHEC public hearing on August 9, 2018.

Respectfully,



Gary Spires
Director, Government Relations
South Carolina Farm Bureau Federation

Petition Supporting Creation Of Western Capacity Use Area

Carl Zimmerman <mgelder074@gmail.com>

Mon 6/25/2018 1:36 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Members of the DHEC Board

I urge you to vote to approve the creation of the Western Capacity Use Area so that together we can assure ground water availability now, and for our children in the future. Your approval of the WCUA is necessary for the following reasons:

=> Ground water levels have been declining for 23 years in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg, and Lexington counties

=> Use of ground water has been steadily increasing in this northwestern area of the coastal plain, where the aquifers are also the shallowest

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=> Approving the designation will trigger the development of a Ground Water Management Plan. The Plan will serve several purposes, including:

1. Defining how to manage new withdrawal requests (be they industrial, Public Utility, or Irrigation)
2. Guiding efforts to move toward sustainable use of our renewable, yet limited, ground water resource

--

Mr Carl Zimmerman
mgelder074@gmail.com

Carl Zimmerman
211 Fox Haven Drive
Aiken, SC 29803

June 23, 2018

The Honorable Mark Elam, Chairman
South Carolina Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RE: Support for Creation of the Western Capacity Use Area

Dear Mr. Elam:

As a resident of the City of Aiken and property owner in Windsor, I am very concerned about the long-term health and viability of Aiken County. Central to this concern is my belief that the region's water resources, groundwater in particular, are in jeopardy from inadequate management of this crucial natural resource.

As documented by the interim results of the USGS study 'Assessment of Groundwater Availability in Aiken County, SC', groundwater levels in Aiken County and the surrounding region have been on the decline for more than 20 years. This, coupled with steadily increasing demand for groundwater by residential, industrial and agricultural users strongly suggests that current management practices are not sustainable.

In order to protect and sustain the critical resource that is groundwater, I strongly support designation of the northwestern portion of South Carolina's coastal plain, including Aiken County, as a Capacity Use Area. With this designation comes the opportunity to develop and implement a long term management plan for the region's groundwater resources; a process that has been demonstrated effective in addressing groundwater sustainability issues in other areas of South Carolina.

Thank you for your anticipated support of this important matter.

Sincerely,

Carl S. Zimmerman



August 16, 2018

RECEIVED

AUG 21 2018

Water Monitoring, Assessment &
Protection Division

Mr. Rob Devlin
SC Department of Health and Environmental Control
2200 Bull Street
Columbia, SC 29201

Dear Mr. Devlin:

The Palmetto AgriBusiness Council ("PABC") consists of member entities closely associated with agriculture, forestry and serving the rural areas of South Carolina. Our primary mission at PABC is promoting and advocating for South Carolina agribusiness. SC agribusiness is the largest industry in our state with an annual economic impact of approximately \$42 billion dollars and employment exceeding 210,000.

A priority for agribusiness in our state is to ensure timely, efficient access to water for our state's agribusinesses and especially our South Carolina farmers. For an extended period of time, there has been an effort to update the 2004 State Water Plan, and this process continues at the present time with the state investing substantial time and financial resources toward assessing this very issue. Given the effort to further collect scientific data utilizing several state-wide entities, PABC is opposed to the Proposed Western Capacity Use Area until which time sound, obvious science-based data clearly and definitively supports the need for future change in capacity use. Our organization is familiar with the ongoing effort in the western portion of our state, which includes seven significant agricultural counties, and strongly recommends that action in the Proposed Western Capacity Use Area be delayed until all data being accumulated is available for consideration.

Thank you for considering the Palmetto AgriBusiness Council's position on this important matter. Should you or your DHEC staff have questions, please contact PABC without hesitation.

Respectfully,

A handwritten signature in blue ink, appearing to read "R. L. Summers", is written over a horizontal line.

Ronald L. Summers
CEO

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Cam Crawford
Vice Chairman
Sarah Windham
Secretary/Treasurer

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1901 Main St.
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Columbia, SC 29201
(803) 256-9099
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www.scagribusiness.org



August 16, 2018

RECEIVED

AUG 21 2018

Water Monitoring, Assessment &
Protection Division

Mr. Rob Devlin
SC Department of Health and Environmental Control
2200 Bull Street
Columbia, SC 29201

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Respectfully,

A handwritten signature in blue ink, appearing to read "R. L. Summers", is written over a horizontal line.

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Suite 1450
Columbia, SC 29201
(803) 256-9099
(803) 926-3463 Fax
www.scagribusiness.org

Fw: Western Capacity Use Area designation

Devlin, Rob

Mon 8/27/2018 3:56 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Nancy Babcock <nbinca936@gmail.com>

Sent: Monday, August 27, 2018 3:56 PM

To: Devlin, Rob

Subject: Western Capacity Use Area designation

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

As you know, we who are home owners here in Aiken County pay taxes at a considerably higher rate than the mega-farmers who are using up our water at an alarming rate. They need to account for the water they are using and at least pay accordingly for starters. Capping the amount of water any one entity or designated acreage is allowed to use within a designated time frame—like the months of April-November would help to preserve what is not an unlimited supply of a resource we all need.

Sincerely,

Nancy Babcock
Windsor, SC

SUPPORT for designation of Western Capacity Use Area

Laura Bagwell <plentypaws@gmail.com>

Mon 8/27/2018 4:02 PM

To: Devlin, Rob <DEVLINRJ@dhec.sc.gov>;

Cc: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Dear Mr. Devlin:

My name is Laura Bagwell and I am a geologist. I recently retired after 25 years of service at the Savannah River Site, where I devoted my career to studying soil and groundwater conditions. For almost all of my life, I have lived in SC. Since 1992, I have been lucky to live in Aiken. I own a very small farm in Aiken and am also a Farm Bureau member. I'm writing to support the designation of a Western Capacity Use Area in Aiken (and six nearby counties) so that SCDHEC can manage groundwater withdrawals in a sustainable way. Capacity Use has been in effect in parts of SC since as early as 1979 (39 years ago) and it's been shown to be effective without placing undue administrative or economic burden on any groundwater users.

Data from SCDNR, SCDHEC, and USGS show conclusively that groundwater levels have been declining for more than two decades in the three main aquifers that underlie the proposed Western Capacity Use Area. We have a robust well network and a rich dataset in this area and the data prove indisputably that groundwater declines are not an isolated, local issue but rather a widespread, regional problem. In short, we are using more water than nature can replenish. This conclusion is shared by area utility managers and by the Aiken County Council, which requested Capacity Use designation more than two years ago.

SCDHEC is mandated by law to do two things: 1) maximize reasonable use of groundwater; and 2) manage groundwater resources in a way that will be sustainable, to ensure availability for current AND future users. Capacity Use is necessary as part of a regional water management strategy to achieve these goals.

In summary:

- Diminishing groundwater is not a new problem – there are multiple causes include population growth and large increases in demand (especially agricultural irrigation).
- This is not a local problem – it is widespread and the entire SC Coastal Plain should be in Capacity Use, as SCDHEC recommended.
- SCDHEC has a long and successful history of managing groundwater by Capacity Use – first established 39 years ago. Capacity Use is one part of an effective resource management strategy.
- We need water for everything – residential wells, municipal water systems, landscape and golf course irrigation, small farming, large agriculture, power, and many industrial applications. The need will continue to grow. Good water management policy is smart business. I want SC to continue to grow and thrive ... and water is required.

- Capacity Use is necessary NOW to ensure that groundwater will remain available for all users. If we want water tomorrow, we need to do this today (yesterday). Capacity Use is a win-win for all -- residential consumers, agricultural users, industrial users. Each of us must recognize and welcome the necessity of prudent management.

Thank you for receiving my comments, and thank you for continuing to steward SC's vital resources.

Best regards,

-Laura Bagwell

Aiken, SC

Fw: groundwater use

Devlin, Rob

Mon 8/27/2018 11:01 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: david l. barbeau, jr. <dlbarbeaujr@gmail.com>

Sent: Monday, August 27, 2018 9:31 AM

To: Devlin, Rob

Subject: groundwater use

Dear Mr Devlin,

I support the designating of a groundwater capacity use area in the west-central part of our state.

The extraction of groundwater resources at the rates necessary to maximize agricultural profit is wasteful, unsustainable, and unfairly and unwisely prioritizes corporations over citizens.

When not well-managed, the timescales of aquifer recharge can be considerably longer than aquifer exploitation.

It is evident that as our state continues to grow we need to be proactive in making decisions for the future that are sustainable, and made for the betterment of the state's citizens as a whole.

Sincerely,

Dr. David L. Barbeau, Jr

Associate Professor of geosciences,

and resident of South Carolina

Fw: Western Capacity Use

Devlin, Rob

Mon 8/27/2018 11:01 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: mpb3263@aol.com <mpb3263@aol.com>

Sent: Monday, August 27, 2018 9:04 AM

To: Devlin, Rob

Subject: Western Capacity Use

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in Aiken county where I live, as well as Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg counties.

Groundwater availability is critical for all the citizens of this region. I support SCDHEC's efforts to manage this vital resource for the benefit of ALL users, not just big industry.

Thank you,

Marion Belcher

Fw: Western Capacity Use Area

Devlin, Rob

Mon 8/27/2018 11:00 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: mbgb4@att.net <mbgb4@att.net>

Sent: Monday, August 27, 2018 10:07 AM

To: Devlin, Rob

Subject: Western Capacity Use Area

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Martin Brown
Aiken County, South Carolina



August 27, 2018

Attn: Rob Devlin
SC DHEC
Bureau of Water
2600 Bull St.
Columbia, SC 29201

Re: Proposed Western Capacity Use Area

Mr. Devlin,

I am writing on behalf of Congaree Riverkeeper to express my organization's support for the designation of the proposed western capacity use area. Congaree Riverkeeper is a grassroots non-profit organization that works to protect the Broad, Saluda and Congaree Rivers in the Midlands region. We work in portions of several counties, including Lexington and Calhoun counties, which are within the proposed western capacity use area.

The State has both the responsibility and authority to protect South Carolina's water resources, both surface water and groundwater. This proposed capacity use area, which is based on a thorough review of the available scientific information, helps accomplish that goal.

Opponents of this effort will likely claim the establishment of a capacity use area will add another layer of burdensome regulation that will harm their interests, and that we should wait for yet more studies before taking any action to protect our water resources. These arguments have been used before and are nothing more than hyperbolic rhetoric intended to delay the agency in upholding its mandate of protecting the State's resources.

Thank you.

Sincerely,

Bill Stangler
Congaree Riverkeeper

Post Office Box 5294 • Columbia, South Carolina 29250
(803) 760-3357 • www.congareeriverkeeper.org



Fw: Supporting Western Capacity Use

Devlin, Rob

Mon 8/27/2018 1:21 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Kathy Cook <7theavenfarm@gmail.com>

Sent: Monday, August 27, 2018 12:32 PM

To: Devlin, Rob

Subject: Supporting Western Capacity Use

TO: devlinrj@dhec.sc.gov

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Sent from my iPhone

Comment on Western Capacity Use Designation for Groundwater

Miles Denham <milesdenham@gmail.com>

Mon 8/27/2018 2:42 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>; Devlin, Rob <DEVLINRJ@dhec.sc.gov>;

Please consider my support for the designation of a Western Capacity Use Area for groundwater underlying Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties.

Clean potable groundwater is the natural resource most taken for granted by the public. The lack of proactive groundwater management is not considered by most people until it is too late (i.e., "You don't miss your water until your well runs dry"). The science is clear that western South Carolina will reach that point in the near future if a good groundwater management strategy is not adopted soon. Designation of a Western Capacity Use Area for groundwater beneath the counties noted above is that groundwater management tool. I believe that a good groundwater management strategy will prevent future onerous regulations and tax increases to pay for infrastructure projects to artificially recharge aquifers, build surface water impoundments, or buy drinking water from other locations.

Groundwater management should not be a politically divisive issue. Groundwater is a resource we all need and we all want to avoid the consequences of an inadequate supply of this most valuable resource.

Thank you for your consideration.

Sincerely,

Miles Denham, Ph.D.
Owner, Panoramic Environmental Consulting LLC
PO Box 906
Aiken, SC 29802

Sent from [Mail](#) for Windows 10

Fw: Western Capacity Use Area: Support!

Devlin, Rob

Mon 8/27/2018 1:22 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Allen Dennis <d3nnis@gmail.com>
Sent: Monday, August 27, 2018 12:20 PM
To: Devlin, Rob
Subject: Western Capacity Use Area: Support!

Dear Mr. Devlin:

I am writing to **support** the designation of the **Western Capacity Use Area** in the counties of **Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg**. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Please contact me you have any question about this.

I have lived in Aiken County 29 years, and taught geology to over 3000 USCA students over the past 30 years.

Thank you.

Sincerely, AD

Allen J. Dennis
1071 Highland Park Drive SW
Aiken, SC 29801-3713

803-642-9324 (h)

Allen J. Dennis
Professor of Geology
Carolina Trustee Professor
SCANA Chair in Physical Sciences
Biology and Geology
University of South Carolina Aiken
Aiken SC 29801-6309
803-641-3396 (o)



August 27, 2018

(Via E-mail and U.S. Mail)

Chairman Mark Elam

And

Board Members

Attention and C/O: Ms. Lisa Lucas, Clerk of the Board

South Carolina Department of Health and Environmental Control

2600 Bull St.

Columbia, SC 29201

Re: Comments in Support of a Capacity Use Area Designation on Groundwater Usage in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties a.k.a. the Western Capacity Use Area – August 27, 2018 supplement

Dear Chairman Elam and Board Members:

I represent Concerned Citizens Safeguarding South Carolina Water (“Concerned Citizens), including concerned Aiken County farmers. The purpose of this letter is to continue to wholeheartedly endorse the adoption of the proposed Western Capacity Use Area (CUA), which is under consideration by the South Carolina Department of Health and Environmental Control Board (“Board”) and rebut the contention that the Western CUA designation does not support farmers.

The Western CUA designation is critically necessary to protect agriculture in the affected counties. Without reliable water supply, water supply planning and water supply management strategies, farming here will be impossible, putting many farmers out of business. This is not an acceptable result to the Concerned Citizens.

The Concerned Citizens are particularly interested in impacts to the small farmer, like one of our important members Mike Rubin. Mr. Rubin owns Jackson Farm. Jackson Farm includes 185+ acres in hay, organic produce and grass fed cattle, hogs and sheep. Mr. Rubin also owns approximately 100 acres in Windsor, and recently sold another 100 acres in Windsor for cattle, with the rest in hay and equestrian development. Mr. Rubin also has interests in other larger hay locales (and other smaller ones as well) on Joyner Pond Rd and Storm Branch Road. Mr. Rubin supports the Western Capacity Use Area designation because he understands that it is an important tool in guaranteeing his ability to sustain his farming operations.

Concerned Citizen Rubin fully supports the protections proposed for ground water. And, he is not the only one. Small farmers will be some of the first ones hurt if South Carolina does not aggressively work on understanding the necessary water supply protection measures and take those measures to make sure there is enough water in the proposed designated area to meet all

users' needs. The Western Capacity Use Area designation would do very little to change the way water supply in the area is allocated. It merely causes the agencies to slow down, take a closer look, and allocate water supply in a more reasoned, measured way. It is a win-win scenario. It cautiously approaches water supply issues without leaving businesses and residents and their water needs unprotected.

In February and June 2018, we made unreserved comments in support of the Western CUA. And, we continue to strongly support the designation. Similarly, the issues relating to water supply planning are so important to the people, businesses, industry, water utilities and natural systems of Aiken County that the designation has been requested and supported by Aiken County government as well.

I am writing to you again today due to very recent negative comments from some farming interests. It is of critical importance that the Board be aware that not all farmers oppose the Western CUA designation. In fact, Concerned Citizens includes important farming members and other agricultural interests, and we support the Western CUA without reservation.

We encourage you to review these and our prior comments, and immediately designate the Western CUA. The comments are all still timely and relevant and provide compelling support for the proposed designation.

Thank you for your kind attention. If you have any questions or require further assistance, please do not hesitate to let us know how we can help. A healthy, thriving water supply is critical to the overall wellbeing of the state, its residents, businesses and industries.

Sincerely,



Dioné C. Carroll, Esq.

Fw: Groundwater use

Devlin, Rob

Mon 8/27/2018 10:59 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Andy Dyer <AndyD@usca.edu>
Sent: Monday, August 27, 2018 10:41 AM
To: Devlin, Rob
Subject: Groundwater use

To: SCDHEC
Re: Western Capacity Use Area

Most people in South Carolina do not believe there is a general water shortage or even that we can run out of water. Nothing could be further from the truth. Our surface waters are near depletion every 5 years or so as we go through cyclic droughts. Atlanta has come close to losing its surface water supply twice in the last ten years. Cities in the Charlotte area are having to make planning decisions based on water usage and availability. South Carolina is not exempt from the problem, but we have few if any rules at all concerning surface and groundwater use.

Surface waters are new water and very limited. Our rivers are fed by rainfall in the mountains mostly and to some extent by local runoff. In all cases, our surface waters are closely related to recent rainfall. These waters support towns, farms, pastures, wildlife, and the coastal fisheries. If one takes a close look at surface water, our economy is centered on it and dependent on it.

Groundwater is old water. It comes from the mountains where the rain seeps into the soil and slowly moves by gravity toward the ocean. It may take decades to hundreds of years for the water to move from the mountains to the coast. When we pump groundwater, we are pumping water that was rain before we were born. It cannot be replenished quickly. Groundwater use has no limitations in South Carolina; anyone and everyone can use it without getting permits or documenting how much they are using. For this reason, all water and especially groundwater should always be considered a "common good" and one that should be carefully monitored for overuse.

For this reason, groundwater is a limited resource. Before we allow unlimited access to it, we need to understand how much of it there is. Currently, no one seems to have a good idea of that. All "common goods" throughout history have been depleted or damaged by overuse usually because no one believes they are limited until it is too late. Common sense does not rule the day when it comes to using a "free" common resource; it is always a free-for-all where everyone grabs as much as they want. The result is always predictable and always tragic.

The waters of South Carolina are currently considered an unlimited common resource, free for anyone use and to whatever extent they want to use them. The result will be depletion by the greedy and economic distress for municipalities and for the state in general. If you do not believe this scenario, please just look at the problems

California and Texas have had recently and are having today; look at Atlanta and northern Georgia; look at Tucson, Phoenix, Las Vegas, Charlotte, and many other cities; look at the states using the Ogallala Aquifer. Then consider how important it should be to regulate surface and groundwater use in South Carolina.

Sincerely,
Andrew R. Dyer, Professor
Washington Group Chair in Science
Department of Biology & Geology
USC Aiken
803-641-3443

Robert Devlin
Division Director
Division of Water Monitoring, Assessment &
Protection - Bureau of Water
devlinrj@dhec.sc.gov

Mark Elam, Chairman
SC Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 2801

August 27, 2018

Re: Proposed Western Capacity Use Area

Dear Mr. Devlin:

This letter is in response to a request for comments regarding the Proposed Western Capacity Use Area in Aiken County. As a resident of Aiken, in Aiken County I am an interested party in the proposed unregistered, unlimited withdrawal of water from the Edisto River by any Agricultural Facility, but my immediate concern has been motivated by an immediate threat to the South Fork of the Edisto River by large agri-business.

Water Law in the United States has been defined since Colonial times by the availability, or lack, of this essential natural resource. Because the volume and distribution of water east of the Mississippi for millennia appeared to be unlimited, a right to use or draw water was determined by frontage on the water (limited by the right of a landowner downstream to water from that same source unimpaired). The western United States having to deal with dry conditions requiring irrigation of crops, and with an incentive to develop heretofore untilled lands, granted water rights to whomever got there first. Eastern water law in general is based upon an historic anachronism - that there is unlimited water for all. With Aiken County hovering in "Incipient Drought" status on and off for the past ten years, and occasionally entering moderate to severe (http://www.dnr.sc.gov/climate/sco/Drought/drought_current_info.php) it is no longer feasible to continue to treat water as an unlimited resource.

Most recent registration of water users as they appear at <http://www.dnr.sc.gov/water/waterplan/swmpdfs/Basins/DRAFTEdistoModelReportDec2015.pdf> page 6-7 through 6-8 shows some 89 entities dipping their straws into the Edisto River Basin only 9 of them have permit limits. Many of those 89 are agri-businesses. Of the remaining nine, two are country clubs, the others are SCE&G, the City of Aiken, The City of Charleston and the City of Orangeburg. Is there something wrong when municipalities are restricted in their usage of water for the public good when businesses are not because of an exemption for agricultural facilities?

With the purchase of approximately 10,000 acres by agri-business in Aiken County over the last decade, the current law would allow these businesses to potentially siphon off a large percentage of the river flow. (Act No. 247, Section 1, eff January 1, 2011, Title 49, Chapter 4 of SC Code of Laws). The Supreme Court of South Carolina, in affirming the lower court ruling of *Jowers et al v South Carolina Department of Health and Environmental Control* (Appellate Case No. 2016-000428) largely wrote off the public interest in this essential resource and, as a practical matter, solidified rights of agricultural corporations to take whatever they deem necessary without *reference to reasonableness* (which is the core value of riparian rights as it

has been interpreted in the past). When the concept of riparian rights first appeared no one could have dreamed there would be vast mono-culture farms with engines running pumps removing millions of gallons in a day. The legislature has promulgated a law that fits with the fantasy of water wheels not the reality of centrifugal pumps pulling 20-44,000 US gallons per minute. **DHEC has the ability to re-balance public versus private values in its review of the Proposed Western Capacity Area in Aiken County.**

As a practical matter the lower court opinion which found that there was no justifiable controversy because plaintiffs “lacked standing and the dispute did not present a justifiable controversy” does not reflect the facts on the ground in 2018. The plaintiffs own property along the river. They therefore have riparian rights. Riparian rights are subject to reasonableness of use of the upstream land holder. The lower court cited cases from 1901, 1908 and 1915 to support its interpretation of reasonableness. In the beginning of the twentieth century could the courts have possibly been determining riparian rights in the face of the upstream holder taking half or more of the flow? The Court found “Because the Act has not deprived the plaintiffs of their riparian rights, they have no standing, and their claim for future injury is not ripe for our determination”. Not finding an unreasonableness on this basis, the lower court removed the statutory basis by which plaintiffs could get relief. As an aside, the McMahon case cited by the lower court the judge states “whether a riparian proprietor has made unreasonable use of the stream is always a question for the jury whether there is any evidence tending to prove that the use was unreasonable” and gives much more weight to the injured downstream proprietor than is reflected in the citation. Here there is no jury to curb the unreasonableness of the upstream proprietor. The actual facts fly in the face of the principle as defined at the beginning of the last century. **DHEC has the ability to act as the jury to balance the needs of upland users and those downstream, and restore the rights of property owners along the Edisto, reflecting the reality of the massive water taking permitted by the Act.**

As Agricultural facilities do not fall within the definition of “surface water withdrawers” they are likewise not subject to the criteria of reasonableness defined at S.C. Code Ann. §§ 49-4-10 to -180 (Supp. 2016). “Agricultural users are treated differently under the Act. “[A] person who makes surface water withdrawals for agricultural uses[2] at an agricultural facility[3]” is classified as a “Registered surface water withdrawer,” § 49-4-20(23), and is not required to obtain a permit, § 49-4-35(A).4 Instead, agricultural users simply register their surface water use with DHEC and are permitted to withdraw surface water up to the registered amount. § 49-4-35(A). Because agricultural users are exempt from the permit requirement, their surface water use is not subject to the subsection 49-4-80(B) reasonableness factors.” “Subsection 49-4-80(B) sets forth the criteria for determining reasonableness: (1) minimum instream flow or minimum water level and the safe yield; (2) anticipated effect of the proposed use on existing users; (3) reasonably foreseeable future need for surface water; (4) reasonably foreseeable detrimental impact on navigation, fish and wildlife habitat, or recreation; (5) applicant's reasonably foreseeable future water needs; (6) beneficial impact on the State; (7) impact of applicable industry standards on the efficient use of water; (8) anticipated effect of the proposed use on: (a) interstate and intrastate water use; (b) public health and welfare; (c) economic development and the economy of the State; and (d) federal laws and interstate agreements and compacts; and (9) any other reasonable criteria DHEC promulgates by regulation. § 49-4-80.” The legislation as it is currently set gives a complete and total pass to Agricultural Facilities. How is this possible? It is as if DHEC has given away the public’s rights to air and sunshine without any constraint whatsoever. **DHEC has the ability to**

balance private and public interests by implementing the Western Capacity Use Area.

As reasonableness, as a practicality right now, does not apply to AgriBusinesses which do not register (and not required to do so) the remedy for harm to those downstream is only available after there is an identifiable harm. Harm in the form of restricted water flow to the Edisto Watershed*

*"The South Fork Edisto River accepts drainage from Shaw Creek, Dean Swamp Creek, Goodland Creek, and Roberts Swamp before merging with the North Fork Edisto River to form the Edisto River. Downstream from the confluence, the Edisto River is joined by Cattle Creek, Indian Field Swamp, and Four Hole Swamp. Prior to joining the Edisto River, Four Hole Swamp accepts drainage from Cow Castle Creek, Providence Swamp, Horse Range Swamp, and Dean Swamp. Downstream from Four Hole Swamp, the Dawho River enters the Edisto River, and their confluence forms the South Edisto River. The Dawho River also merges with the Wadmalaw River to form the North Edisto River. Both the South Edisto and North Edisto Rivers drain to the Atlantic Ocean." <http://www.scdhec.gov/HomeAndEnvironment/Water/Watersheds/WatershedMap/EdistoWatershed/mindex.htm>

would have a dramatic "waterfall effect" harming recreational and natural features. When a river goes dry, everything in it dies. Keep in mind the Colorado River which carved the Grand Canyon has been diminished in its flow to the extent that it disappears completely south of Yuma, Arizona. I personally witnessed the complete cessation of the flow of the Big Wood River in the Wood River Valley in Idaho this summer. "Water is typically turned into the canal by April 15th depending on the year, weather, and calls for water. It is typically turned off completely by October 1st. Water cuts based on year of priority take place based on available water in the Big Wood River along with priority calls from other water users. Because of substantial water conveyance loss in our systems, as the summer goes on and less and less water is available our system starts to lose its capability to deliver water rights that are still being delivered into the system. *The water is literally gone before it can get to the end user.*" (Wood River Valley Irrigation District - <http://www.wrvid45.com/general-information>). This is not immediately applicable to the case at hand as we are not facing such a dire situation as the Colorado or The Big Wood, but bear in mind that unrestricted water use in other parts of the country has resulted in disaster. **DHEC has the ability of mediate the future inadequacy of available water to Aiken County.**

Farms growing potatoes have made purchases of large swaths of tillable land in Aiken County. Many farms are currently permitted and registered surface water users in the Edisto Basin (<http://www.dnr.sc.gov/water/waterplan/swmpdfs/Basins/UIFResultsEdistoMay2016.pdf>) but they do not have a permit limit (or maximum). An example is Walther Farms. In a widely available and favorable 2014 op-ed by David Winkles (President of the South Carolina Farm Bureau) welcomed them to the State (<https://www.scfb.org/news/op-ed-by-david-winkles-on-walther-farm-in-aiken-county>). This is not to cast an aspersion on the Corporation but rather to address issues that large Agri-Businesses in general are creating in Aiken County. I would like to respond to his points: (1) Walther has cleared what was an "unusable tract of scrub oaks and are turning it into what will become one of the Southeast's most sustainable, "green" farming operations". As late as 2011 the area now owned by Walther Farms can be seen on Google Earth (see Addendum attached) to encompass small patches of land in agriculture which are virtually unchanged since 1999. (2) "And, they are just that – a family farm. Many

have painted them with a negative brush associated with large “corporate farms.” While technically correct the use of “family farm” is an anachronism which harks back to Ma and Pa and the kids milking the cow before they went to school. Walther’s website shows that they own over 18,000 acres in 16 locations and employ over 150 people in those 16 locations. The Aiken County recorder of Deeds registers 190 transactions since 2013 involving mortgages, deeds and other transactions in the name of members of the Walther family, Walther & Sons, Inc. with the vast majority in the name of Walther Investment LLC. With Headquarters in Michigan (<https://businesswiki.info/company/ga/2191394/walther-investment-llc>) profits as well as water flow out of state. (3) He could not see “the river from their fields because of the vast buffer zones of trees they left intact to keep that treasured waterway pristine”. There is no huge wall of trees as evidenced by reference to the Google Earth images in the Addendum. (4) The statement that one farm of 2000 acres compares favorably with the 312 farms larger than 2,000 acres in SC, but this in only one of many parcels that the Corporation owns. (5) long range plans call for the hiring of 70-80 people in the future. They are already managing the entire company with 150 people. Do they reasonably envision a 50 percent increase in employees?. (6) They came here looking for sandy soils and at the “request of their customers, grocery chains and processors, who have taken a recent interest in promoting a smaller carbon footprint of food distribution and delivery”. He fails to evidence any request from the local population. (7) “As much as we support the small and beginning farmer -- unless we return to a time when most of the population plants and harvests what they eat -- we will need to rely on farmers like the Walthers to provide the food and fiber for the 98.3% of us who get our food from the grocery store - not from a garden in the back yard.” Yes, True, but we do not want our rivers and groundwater drained along the way. There needs to be some curb on use. **DHEC has the ability to provide guidance and protect the public and those creatures and habitats which rely on the Edisto River.**

We are not asking for Agri-Business to go away. We are asking for the Legislature and DHEC to put into place some regulatory ability to control insatiable thirst for the benefit of the few and the cost of many.

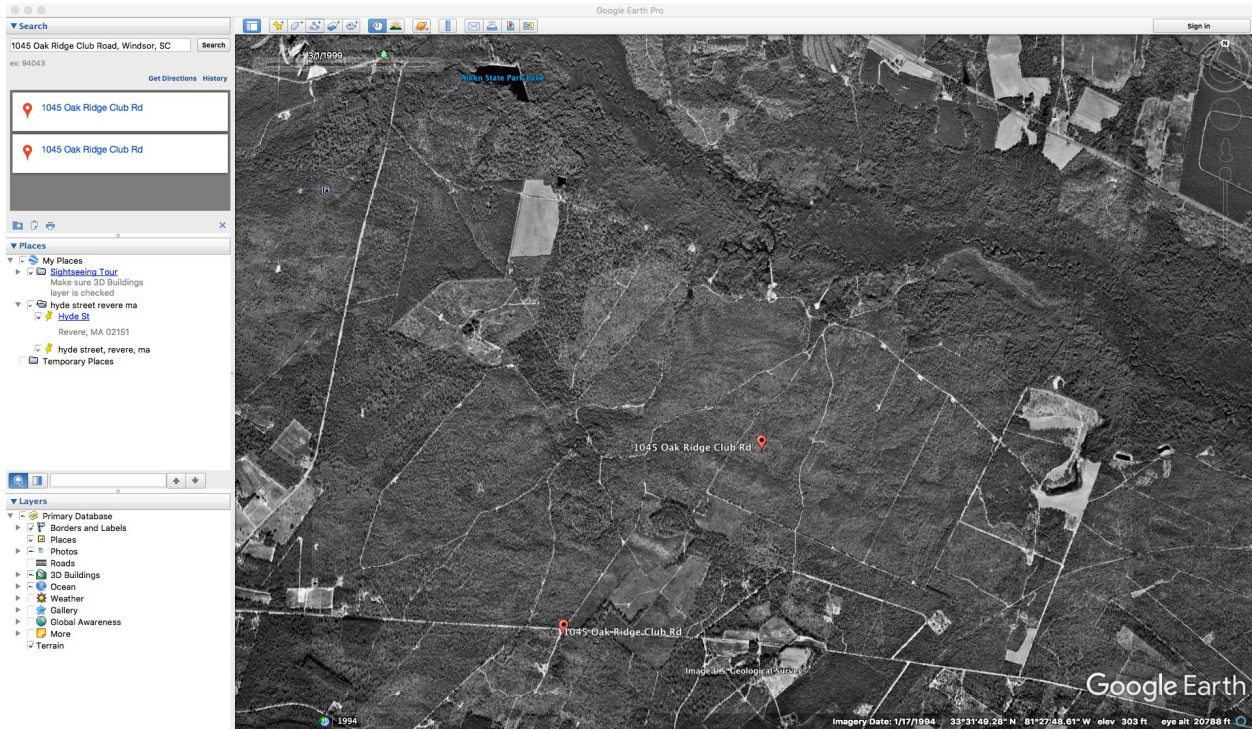
Thank you,
Elisabeth Harpham

1750 Huntsman Drive
Aiken, SC 29803
tortrefarmer@gmail.com

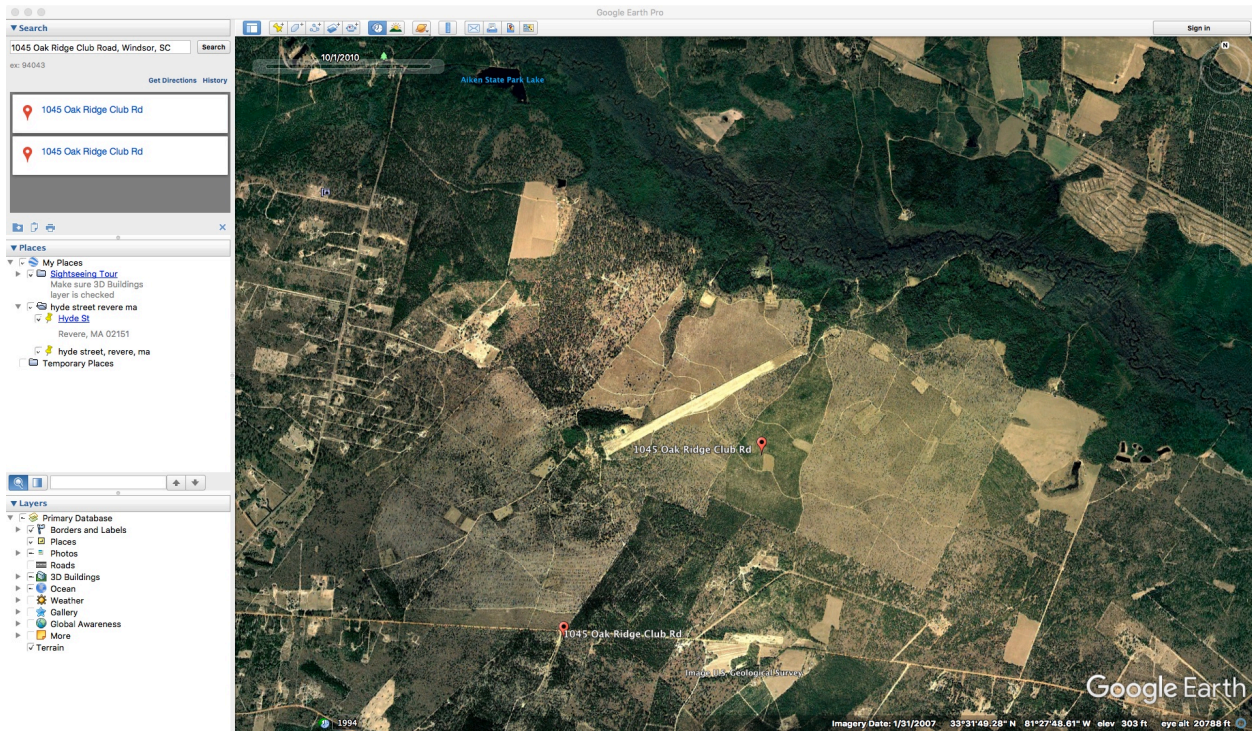
cc: Joanna Dunn Samson
jsouthdunn@gmail.com

Addendum

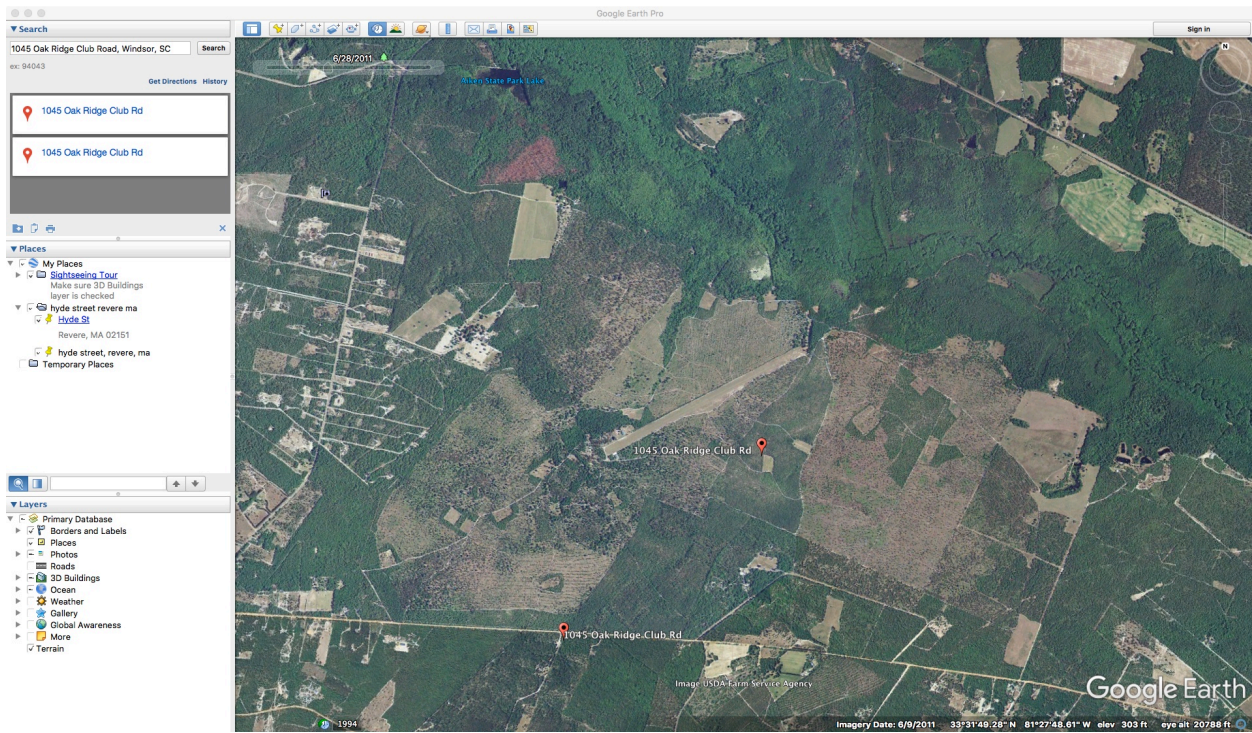
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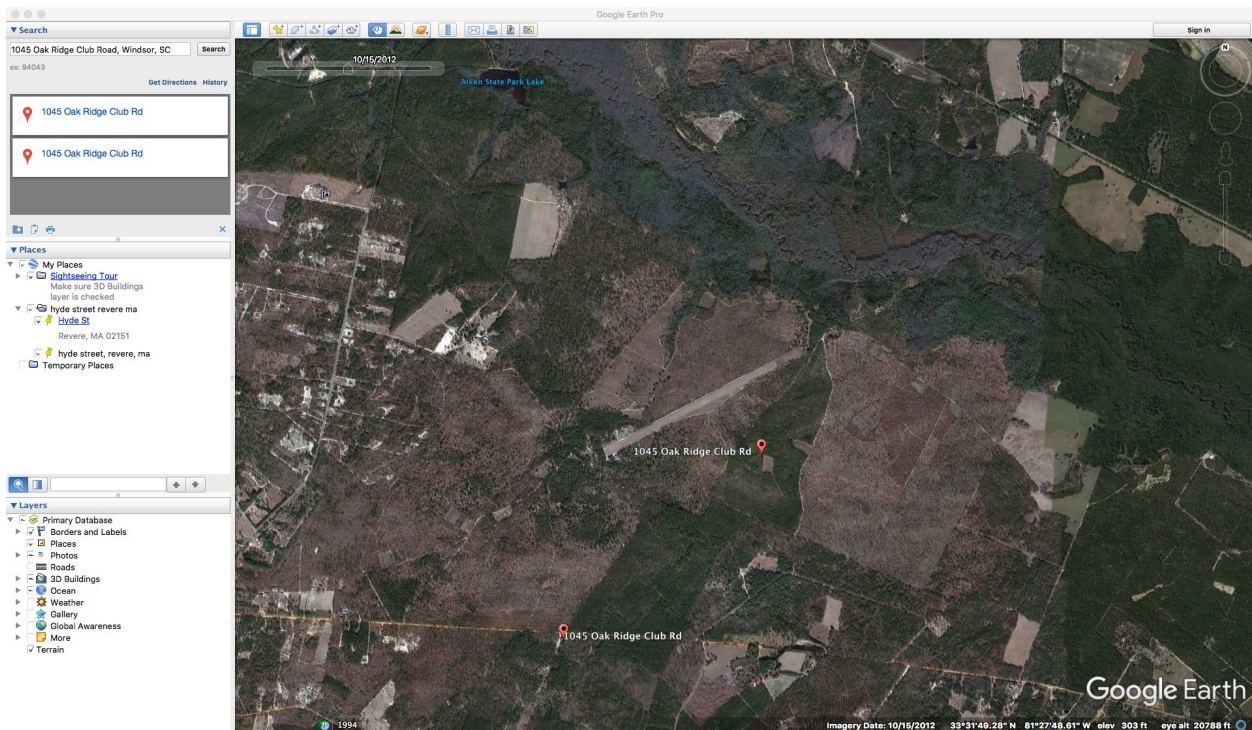
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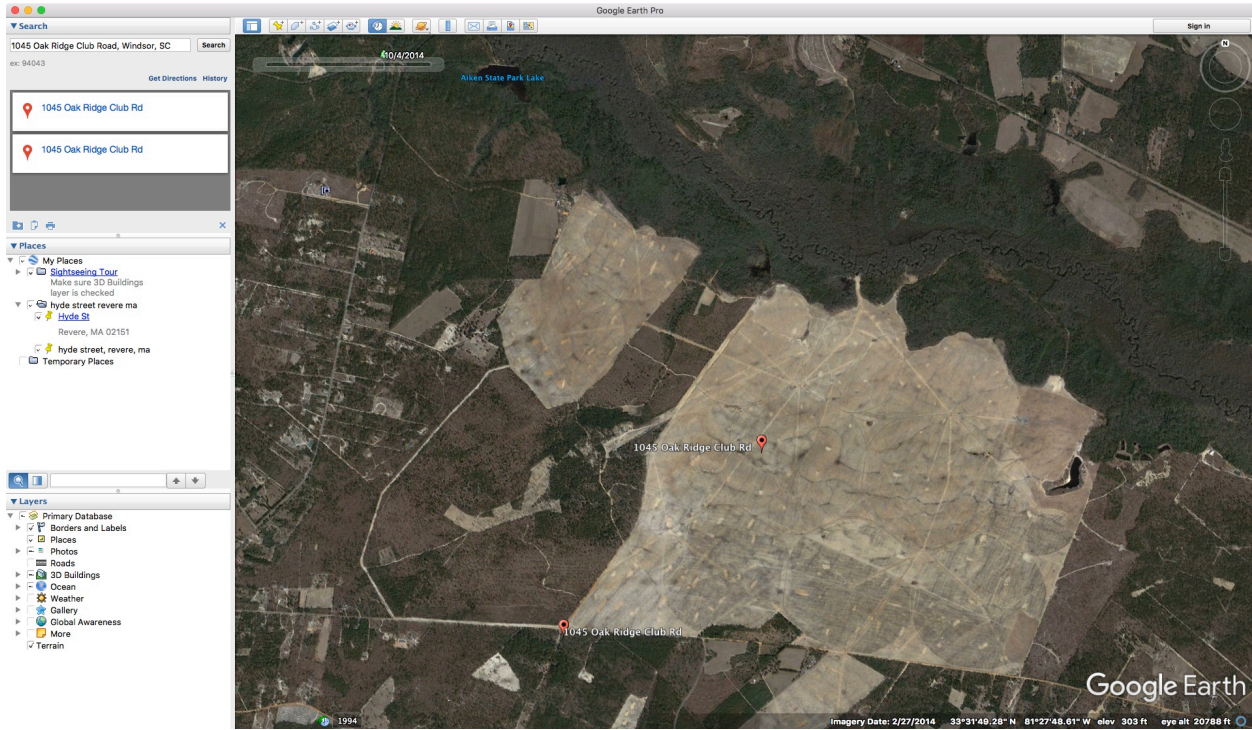
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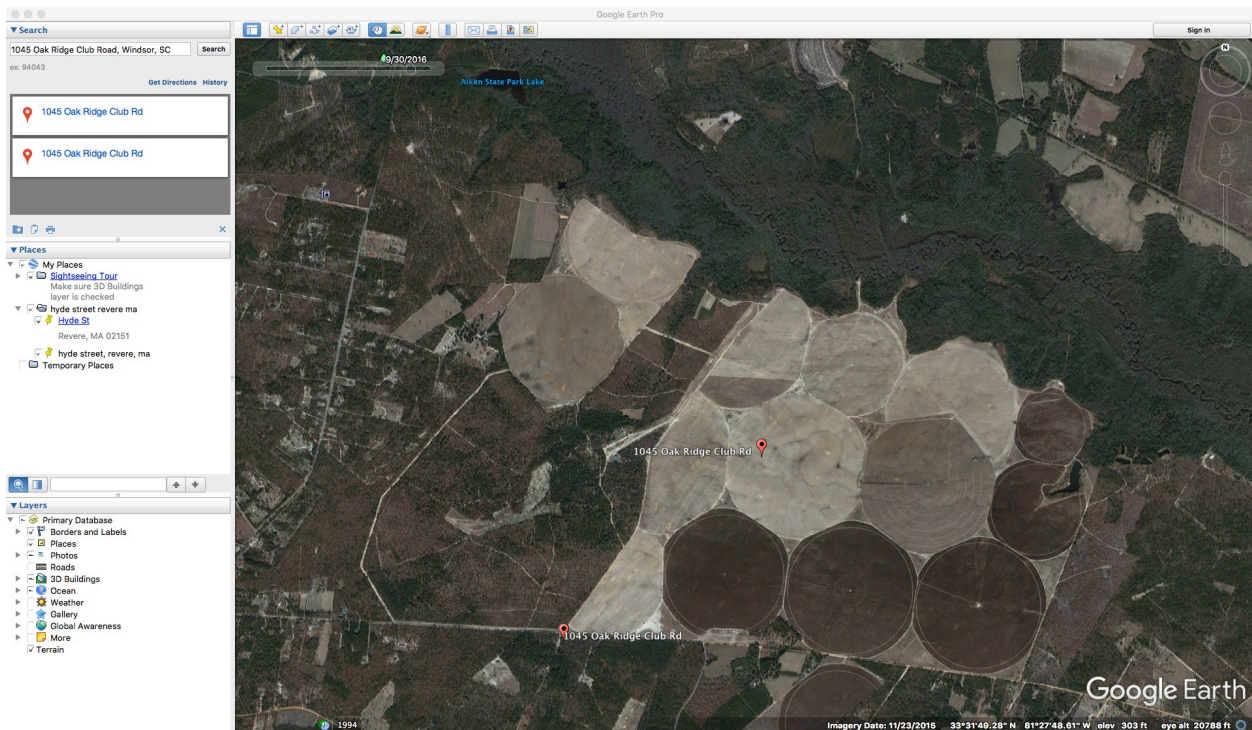
Site in 2012:



Site in 2014:



Site in 2016



Fw: Proposed Groundwater Capacity Use Designation

Devlin, Rob

Mon 8/27/2018 11:01 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Kelly Gibson <KellyGi@usca.edu>
Sent: Monday, August 27, 2018 9:21 AM
To: Devlin, Rob
Subject: Proposed Groundwater Capacity Use Designation

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users. Groundwater levels have been declining for more than two decades in the three main aquifers that underlie the proposed Western Capacity Use Area, and the demand for groundwater is increasing with population growth and with development of large agricultural tracts in this area - particularly the latter. It is becoming increasingly common to read stories in The State and the Aiken Standard about increasing groundwater issues with agricultural development. Multiple studies by SCDNR and SCDHEC have concluded that a Western Capacity Use Area is necessary to maximize reasonable use of groundwater and maintain the availability of groundwater for existing and future users. The Board has previously established Capacity Use Areas in other regions of SC, including the cities of Myrtle Beach, Charleston, and Hilton Head. The Capacity Use program has proven to be a successful and effective resource management strategy in these areas.

Thank you for your time and consideration.

Kind regards,
Kelly Gibson

.....
Dr. K.A. Gibson
Instructor, Dept of Biology/Geology
University of South Carolina Aiken
Aiken, SC 29801

Office (USCA): 803-641-3379
Cell: 215-595-3022
kellygi@usca.edu

August 26, 2018

Rob,

I am writing to you in support of the proposed designation of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties as a Capacity Use Area. While I don't live in the affected counties, management of our groundwater resources is, and should be, a concern for every citizen of South Carolina. The proposed designation is supported by a body of data collected not only by SCDHEC, but also by the U.S. Geological Survey and the SCDNR. The sum total of this data indicates the following:

- 1) The aquifers in the South Carolina Coastal Plain are regional extending beyond any geopolitical boundary such as county or even state boundaries. Impacts of groundwater use can, cumulatively, have impacts that extend beyond immediate locales. A good example of this regional aspect to groundwater use is the significant regional decline in groundwater levels in the Floridan aquifer in the Savannah/Beaufort area. While this example is outside of the proposed area, it demonstrates the broad regional nature of groundwater occurrence and behavior in the Coastal Plain. Establishing the Western Capacity Use area would help to prevent such an impact to the aquifers in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg Counties.
- 2) In the proposed area, groundwater levels have shown a sustained decline over time in all the regional aquifers (Gordon, Crouch Branch, McQueen Branch), in some areas by as much as 15 feet (Bamberg, Calhoun and Orangeburg Counties). While these declines are not of the magnitude seen in the Trident or Low Country Capacity Use Areas, the "thickness" of the aquifer systems in the proposed area is significantly less than the systems in the Trident and Low Country areas.
- 3) In addition to the sustained declines, an increase in the amplitude of seasonal fluctuations has been observed in the Crouch Branch aquifer in Orangeburg County (see page 13 of the report showing the graph of water level data for ORG-0393). Further monitoring by the three agencies may identify additional areas where the amplitude of the seasonal fluctuation has increased. This issue may have the greatest impact on private wells in rural areas. If the wells are constructed such that the pumps can't be lowered below the level of greatest drawdown in groundwater levels (usually in late summer to fall with recovery of water levels by late winter), the well owner is without access to drinking water for part of the year.
- 4) Reported groundwater use has been steadily increasing for all of the counties in the proposed area, with the most significant increase in use occurring in Aiken and Orangeburg Counties. The primary driver in increased groundwater use in Aiken County has been the increase in use of groundwater for public water

supply. In Orangeburg County, the increase in groundwater use has been from agricultural/irrigation use. In the other counties (Allendale, Bamberg, Barnwell, Calhoun, and Lexington Counties), groundwater has primarily been used for agricultural irrigation. Predicted increases in population in Aiken County will put further stress on groundwater resources. Changes in irrigation practices will also potentially add stress on the groundwater systems. Statewide, the number of irrigated acres increased from 95,642 in 2002 to 159,239 in 2012 for an increase of 66%.

(<https://www.clemson.edu/extension/publications/files/agronomic-crops/ac05-spread-and-extent-of-irrigation-in-sc-by-crop-croup.pdf>)

This is reflected in the reported agricultural use of groundwater for all of the counties (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg).

Currently, entities installing wells capable of withdrawing 3 million gallons or more a month only have to notify the Department of their intent to install these wells. The Department has no authority to evaluate the potential impact from these wells on existing users prior to their construction, nor can the Department limit the amount of water withdrawn by these wells. If these counties are designated as a capacity use area, the Department can provide input and direction to those proposing to install these wells such that impacts to existing users can be limited or negligible. As increased demands are made on our water resources, it becomes more and more important that the Department has the tools and mechanisms in place to ensure all users of groundwater will have access to groundwater to meet their needs.

Thank you for your efforts in wisely managing our groundwater resources.

Regards,
Harriet Gilkerson

Fw: Aiken County Capacity Use Designation

Devlin, Rob

Mon 8/27/2018 4:57 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: George Grinton <GGrinton@CityofAikenSC.gov>

Sent: Monday, August 27, 2018 4:49 PM

To: Devlin, Rob

Subject: Aiken County Capacity Use Designation

Rob,

I was just taking with Bruce Campbell with the USGS and discovered that the period for public comment period concerning the designation of Aiken County as a Capacity Use District along with 5 other nearby SC Counties is today. I was hoping to be able to provide you with input from the City of Aiken's perspective, however, since I just discovered the opportunity, I was wondering if the deadline might be extended. I know of one other Aiken County citizen who has been attending all of the USGS project study meetings that would likely want to provide his input.

As a little background, I have worked with Bruce in his modeling study of Aiken County underground water since the beginning of the project as the City of Aiken contact. The City of Aiken has supported his project financially for the last 3 or 4 years. In general we are in favor of planned sharing of the underground water resources in Aiken County and we are very interested in maintaining the water quality of the underground aquifer. The City of Aiken is heavily dependent on groundwater for supplying its service district's water. Groundwater wells supply approximately 80% of the drinking water to our water service area. We are very interesting in insuring that the water supply is sustainable and that the quality of that water is assured. I believe that the designation of our area as a Water Capacity Use Area would contribute to achieving these goals.

George Grinton
City of Aiken
Project Manager

This City of Aiken e-mail message (including any file attachments) is intended for the use of the individual or entity to which it is addressed, and may contain information that is privileged and/or confidential. If you are not the intended recipient, any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail and delete or destroy all copies of this message and any file attachments(s). Thank you!

Fwd: Ground water use

Devlin, Rob

Mon 8/27/2018 2:23 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Get [Outlook for iOS](#)

From: Kirby Hill <quebec3@att.net>
Sent: Monday, August 27, 2018 1:46:15 PM
To: Devlin, Rob
Subject: Ground water use

TO: Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Kirby Hill
Aiken county

Sent from [Mail](#) for Windows 10

Fw:

Devlin, Rob

Mon 8/27/2018 11:00 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Barbie Jackson <bjsjjackson@pbtcomm.net>

Sent: Monday, August 27, 2018 9:48 AM

To: Devlin, Rob

Subject:

Dear Mr. Devlin:

We are writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and we fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Jimmy & Barbara Jackson
Aiken County

Sent from my iPhone

Fw: Western Capacity Use Area

Devlin, Rob

Mon 8/27/2018 11:00 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Branden.Kramer@srs.gov <Branden.Kramer@srs.gov>

Sent: Monday, August 27, 2018 9:37 AM

To: Devlin, Rob

Subject: Western Capacity Use Area

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Thanks,

Branden Kramer

Savannah River Nuclear Solutions, LLC

Bldg. 730-4B 3049

Aiken, SC 29808

Tel: 803-952-6378

Fw: Capacity Use/Groundwater

Devlin, Rob

Mon 8/27/2018 11:21 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: lauradexterlance@gmail.com <lauradexterlance@gmail.com>

Sent: Monday, August 27, 2018 11:17 AM

To: Devlin, Rob

Subject: Capacity Use/Groundwater

Good morning Mr. Devlin,

I have been following this issue for several years now, beginning with the arrival of the Walther Bros. farm in Aiken County. My primary concern has been over the finiteness of water resources -- a lesson some communities around the country and the globe are learning too late. While my health has prevented me since 2017 from being on the frontlines of the effort to protect our state's water resources, I remain an informed citizen who is concerned about the need to advocate for responsible stewardship as industrial-scale farming, and the influence of Wall Street money on policy, water ownership and citizens' rights pose varying levels of threat to South Carolina's water resources.

Existing water-use regulations did not anticipate the added burden of industrial farming operations and the increase in SC's population over the past several decades -- two factors that climate change only compounds. Had we all been clairvoyant, we would have long-ago taken action to protect our groundwater supplies from depletion and, in doing so, also protect our rivers.

Fortunately, it is not too late. Therefore, I -- along with a lot of other everyday South Carolinians along with the dedicated, hard-working citizen advocates who have been working on this effort -- SUPPORT the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg.

Sincerely,

Laura D. Lance

Lifelong resident, Aiken, SC

Fw: SCDHEC Western Capacity Use Area in Aiken

Devlin, Rob

Mon 8/27/2018 11:30 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Randy Molnar <modog56@yahoo.com>
Sent: Monday, August 27, 2018 11:29 AM
To: Devlin, Rob
Subject: SCDHEC Western Capacity Use Area in Aiken

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Jean and Randy Molnar
Three Runs Plantation
Aiken County

Fw: Proposed Groundwater Capacity Use Designation

Devlin, Rob

Mon 8/27/2018 1:22 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Eileen Prussman <egprussman@gmail.com>
Sent: Monday, August 27, 2018 11:45 AM
To: Devlin, Rob
Subject: Proposed Groundwater Capacity Use Designation

Dear Mr. Devlin:

I am writing as a resident and homeowner in Aiken County, to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users.

Sincerely,

Eileen G Prussman
Aiken, SC



SAVANNAH RIVERKEEPER®

P.O. Box 60 Augusta, GA 30903

Phone: 706-826-8991 | Fax: 706-826-8995

Toll Free: 844-263-1415

Email: info@savannahriverkeeper.org

Web: www.savannahriverkeeper.org

August 27, 2018

SC DHEC

Attn: Bureau of Water, Robert Devlin

2600 Bull Street

Columbia, SC 29201

Savannah River Comments on Proposed WCUA

Dear Mr. Devlin,

These comments are submitted on behalf of Savannah Riverkeeper, Inc. We are a 501c3 nonprofit organization working to respect, protect, and improve the entire Savannah River Basin. We represent the more than 1.4 million people in both Georgia and South Carolina who rely on the watershed for drinking, fishing, recreation and industry.

Savannah Riverkeeper is supportive of the Western Capacity Use Area and supportive of the South Carolina Department of Health and Environmental Control's efforts to protect groundwater for all uses. We look forward to continuing to work on responsible groundwater management throughout the Savannah River watershed and the state of South Carolina. The Savannah River is blessed with abundance, and even so, it has reached it's finite capacity. With 90% of the assimilative capacity for discharge being used by Georgia, South Carolina has been largely left out of utilizing this river as an economic driver. It is important for South Carolina to focus on the groundwater resources in the Savannah River Basin.

Savannah Riverkeeper has worked on these issues for years now, not only in our own basin but the Edisto River Basin as well. It is great to see this progress through important step in assessment being taken. Some points to consider:

1. Agriculture is the backbone of South Carolina's economy, therefore equitable treatment for all farmers is important. Since much of the coast is already part of the Capacity User System, creating the Western Capacity User Area is a crucial first step for equitable use of the state's natural resources.
2. The aquifers in this area are already included in other Capacity Users Areas along the coast, so this new designated area would help to balance use. Remembering the shared nature of groundwater is important for our coastal tourism-based economy and growing population which requires plentiful drinking water.
3. In this area we are seeing an increase in large-scale agriculture as the population dwindles in some counties. We've seen what this kind of rise in water withdrawal can do based on experience in the Edisto Basin where rapid drawdown has caused competition for water.
4. The next thing that needs to be done is to introduce regulation on water withdrawals, not just a monitoring program. We look forward to working with DHEC and the Capacity Users to establish regulations in the future that will help to create equitable access to water resources.

Thank you for taking our comments into consideration. We are encouraged by these first steps and appreciate DHEC's commitment to the environment and our shared resources and look forward to cooperation for progress. Reach out to us if you have any questions on these or wish to discuss them further.

Sincerely,



SAVANNAH RIVERKEEPER®

P.O. Box 60 Augusta, GA 30903

Phone: 706-826-8991 | Fax: 706-826-8995

Toll Free: 844-263-1415

Email: info@savannahriverkeeper.org

Web: www.savannahriverkeeper.org

A handwritten signature in black ink, appearing to read 'Tonya Bonitatibus'. The signature is fluid and cursive, with a large loop at the end.

Tonya Bonitatibus
Executive Director / Riverkeeper,
Savannah Riverkeeper
riverkeeper@savannahriverkeeper.org



PO Box 2054 ■ LEXINGTON, SC 29071
803/356-6809 ■ FAX:803/356-6826 ■ SCGWA@SC.RR.COM ■ WWW.SCGWA.ORG

August 27, 2018

Mr. Robert Devlin
SCDHEC, Bureau of Water
2600 Bull Street
Columbia, S.C. 29201

RE: Proposed Western Capacity Use Area

Dear Mr. Devlin:

The South Carolina Ground Water Association (SCGWA) appreciates the opportunity to submit comments on the proposed Western Capacity Use Area. While we support the conservation of our most precious resource, we do not believe the infrastructure is currently in place to properly monitor the program. For it to be effective, SCDHEC must look past a permitting and registration program to establishing a standardized use of flow meters to actually monitor water withdrawal. Meters should be installed on all new well construction, and SCGWA would like to receive annual updates on agricultural, municipal, recreational, residential irrigation, and residential drinking water wells installed in the Western Capacity Use area to help keep our drillers more informed as to the amounts of water being withdrawn.

Also, we request that the Capacity Use Permit (if the number is different from the NOI/3647) be submitted to the driller for their records and as an identification number when submitting additional information on repairs or changes to that well. The process currently requires an NOI/3647 to be submitted to SCDHEC Water Well Permitting from the driller. An additional SCDHEC Form 2504 Application for Groundwater Withdrawal Permit or Form 3724 Groundwater Withdrawal Notice of Intent has to be submitted by the owner or agent. Currently the driller is not responsible for either of these permits but is, however, responsible for the construction of the well which makes the driller responsible for the information that is in the permit. One application, one permit would simplify this process.

Finally, we request that a representative of SCGWA be included on any committee, task force, or council where issues regarding South Carolina's ground water is being discussed and/or debated. Representation by the drillers in our state on these important issues is essential for the continued conservation of our ground water.

Thank you again for the opportunity to submit these comments. Please feel free to reach out to me or any member of the SCGWA board if you have questions or require additional information.

Sincerely,

A handwritten signature in blue ink that reads "Michael L. Gill".

Michael L. Gill
President

Fwd: Public Input on Groundwater Capacity Use

Devlin, Rob

Mon 8/27/2018 3:44 PM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

Get [Outlook for iOS](#)

From: Donald Stevenson <dstevenson388@gmail.com>

Sent: Monday, August 27, 2018 3:33:41 PM

To: Devlin, Rob

Subject: Public Input on Groundwater Capacity Use

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region as is true for any region of South Carolina. I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users. Two of the more important points..

1. Groundwater levels have been declining for more than two decades in the three main aquifers that underlie the proposed Western Capacity Use Area.
2. Multiple studies by SCDNR and SCDHEC have concluded that a Western Capacity Use Area is necessary to maximize reasonable use of groundwater and maintain the availability of groundwater for existing and future users.

Capacity Use is a good for all groundwater users. Recognizing the necessity of prudent resource management is vital to sustainability.

thank you

don stevenson

Fw: Groundwater Availability

Devlin, Rob

Mon 8/27/2018 10:59 AM

To: Berezowska, Amira M. <berezoa@dhec.sc.gov>;

From: Debbie Winall <debbie.winall@gmail.com>

Sent: Monday, August 27, 2018 10:34 AM

To: Devlin, Rob

Subject: Groundwater Availability

Dear Mr. Devlin:

I am writing to support the designation of the Western Capacity Use Area in the counties of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg. Groundwater availability is critical for all citizens of this region, and I fully support SCDHEC's efforts to manage this vital resource for the benefit of ALL users. The tremendous amount of water used for irrigation by the megafarms greatly concerns me and I fear there will not be enough water for others in these counties.

Sincerely,

Deborah Winall

765 Winter Place Dr

Trenton, SC 29847 (Aiken County)

June 19, 2018

RECEIVED

JUN 21 2018

Clerk, Board of Health
and Environmental Control

Board of Directors
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina

Dear Members of the Board:

Writing on behalf of over 100 small family farm owners in the Oakwood/Windsor area of Aiken County, I urge you to vote in favor of designating our northwestern corner of the coastal plain the Western Capacity Use Area.

Concerns about the viability of our local domestic wells arose after new deep wells were installed by a public water utility and for large irrigation projects. My wife and I had experienced a dry private well several times during the drought in 2008. Local backyard meetings in 2015 and 2016 had neighbors sharing more recent similar problems. They were incurring expenses to repair and/or deepen wells experiencing pump burnouts and lower water levels. These meetings led to the researching of publicly-available SC DNR state-wide well data and development of the attached summary chart. This chart, which highlighted our concerns, was presented to local legislators, your legislative oversight committee, and the Aiken County Council.

The monitoring well chart clearly shows the long-term trend of declines in several Aiken County wells. This is in line a USGS finding that though "the City of Aiken was the only one of the 66 stations analyzed that has an increasing trend in precipitation. . ." there have been 100 years of declining rainfall in South Carolina. It also reflects declines in wells across all seven of the counties included in your staff's Assessment of Groundwater in the proposed Western Capacity Use Area (WCUA).

I personally attended all of the WCUA stakeholder meetings. Most often heard were irrigation users worried about changes to their way of life or access to water supplies in the future. They were assured this fifth CUA designation will not change current allocations or reporting requirements for currently-registered users. At none of those meetings did those expressing concerns present any science-based information that countered the data and conclusions found in the Preliminary Assessment.

As USGS and SCDNR have noted in their ongoing Aiken-area study, the groundwater declines shown on the attached chart and in the Preliminary Assessment "could, therefore be related more to the increasing rates of groundwater withdrawals than changes in precipitation rates ...". This new CUA designation is needed to assure our community there will be sufficient water to support all users. It also will enable the establishing a Ground Water Management Plan to ensure we have sustainable use as the area continues to grow.

Again, I urge you to heed the science. Approve this designation so we all can come one step closer to meeting the recommendation in the State's 2004 Water Plan that "the entire Coastal Plain province be designated a Capacity Use area.

Sincerely,

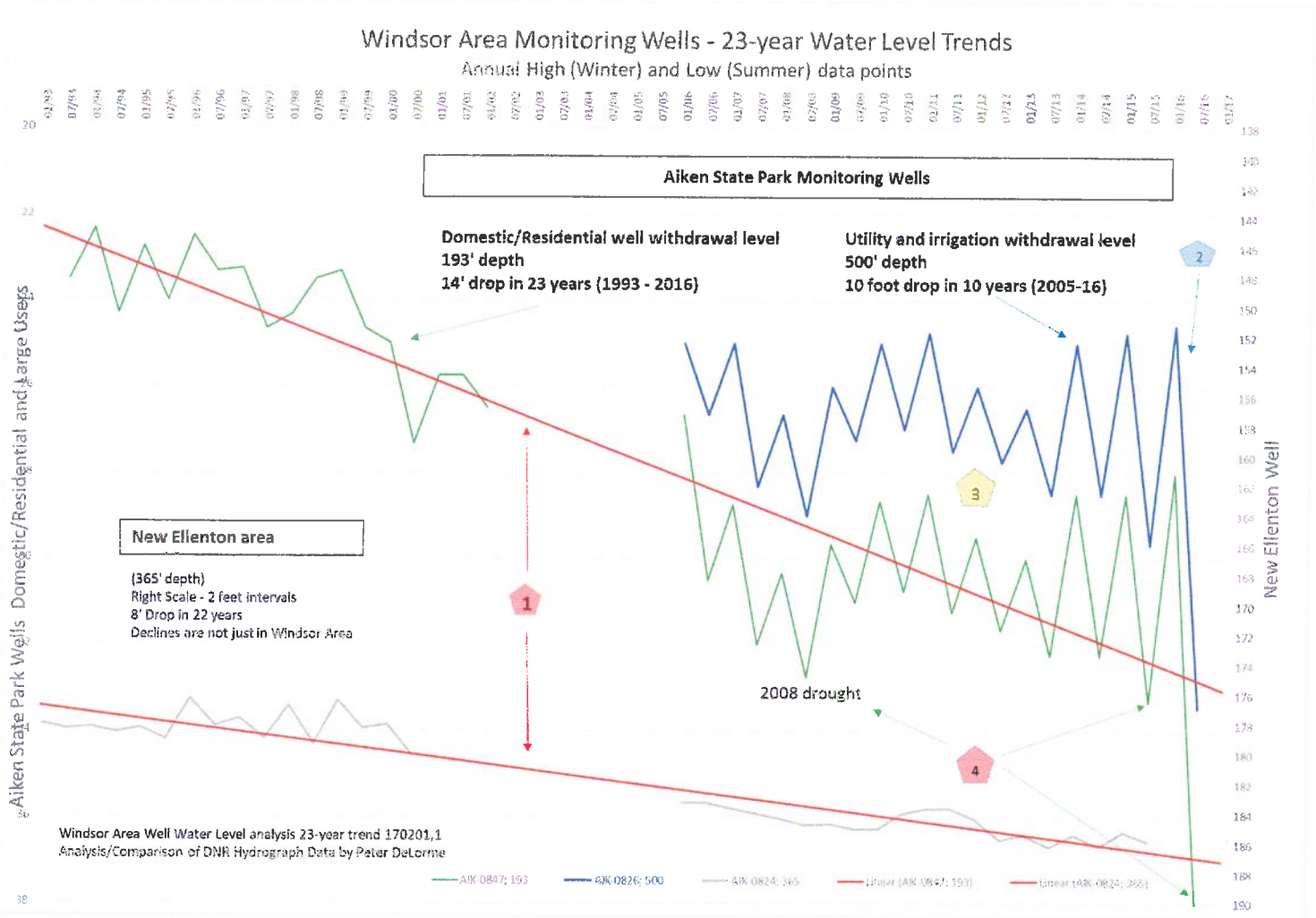


Peter De Lorme

Pastoral Advocates For Aiken County

Aiken County selected Monitoring Well Water Levels

1993 to 2016



Key Points

- 23-year trend of declines across the county, including State Park, New Ellenton, and other areas
- Most alarming to both area residents, and state hydrologists, are the dramatic 2016 declines in the spring and summer growing season months.
- Interconnectedness of shallow and deep aquifers in the Windsor area is apparent in the similar seasonal fluctuations by wells in the C-3 cluster at Aiken State Park
 - Public water utilities and irrigators withdraw at lowest aquifer level – 400 feet
 - Homeowner withdrawals are generally at 200 feet (above the large withdrawers)
 - The likely interconnectedness of the aquifers causes large withdrawals by farms and utilities to affect small homeowners – reference cluster of nearby wells with problems
- State Park summer lows are now exceeding those of the 2008 drought

W.A.T.E.R.

(Water for Aiken Through Environmental Reform)

Western Capacity Use Area – Key documents and a review of the science

1. July 19, 2016 Aiken County Council voted to request CUA designation from DHEC

- a) Presentation by Pastoral Advocates for Aiken County (now W.A.T.E.R) group to Development Committee, followed by discussion in Work Session, and final discussion and amendment during full Council regular meeting
- b) Seven votes in favor, one abstention (Siders - insurance agent to large irrigator), and one member not present (Smith)
- c) Kathy Rawls (whose district includes Aiken State Park and Oakwood/Windsor area) provided strongest support citing vanishing artesian wells in her district

2. SC DNR: [South Carolina Water Plan - 2004](#)

- a) P.97 – “To protect aquifer systems and to ensure the long-term sustainability of the ground water resources, the entire Coastal Plain province should be designated a Capacity Use Area”

3. SC DHEC: [A Preliminary Assessment of the Groundwater Conditions in Aiken, Allendale, Bamberg . . .](#)

- a) P.1 - Executive Summary recaps assessment supporting designation
- b) P.5 – Hydrogeologic Framework – interconnected aquifers near Windsor (Point A on chart)
- c) P.11-Aiken well # 847 – Downward trend and sudden drop in 2016 (Drop is similar in 2017 and 2018)
- d) P.18-Population and Water Use Increases - Consumption growth
- e) Throughout – all seven counties showing declines, which percentage-wise, triggered creation of four other CUAs

4. USGS/ SC DNR: [Assessment of Groundwater Availability in Aiken County SC](#)

- a) Intro provided overview and concerns
 - i) Public utilities, and Aiken city and County express concerns and provide funding since 2014
 - ii) Objective: Manage [ground water] demands and ensure high quality ground water
- b) Problem Statement is in paragraph 4
 - i) 100 years of declining rainfall in SC: An analysis of 100 years of precipitation data (1913 – 2013) from 66 climate stations across South Carolina by Mizzell and others (2014) indicated a generally decreasing trend.
 - ii) Exception is Aiken: However, the climate station at the City of Aiken was the only one of the 66 stations analyzed that had an increasing trend in precipitation of over 1 inch over all four seasons.
 - iii) Increasing use: The groundwater level declines could, therefore, be related more to the increasing rates of groundwater withdrawals than changes in precipitation rates due to changes in climate.
- c) DeLorme note: despite adequate rainfall in Aiken, summer well levels have steadily declined for past 25 years

9/10/2018

Mail - LUCASLM@dhec.sc.gov

Western capacity ...

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

Stephanie Mitchell <pmdclass@yahoo.com>

Fri 9/7/2018 11:04 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

Please support western capacity use expansion!!!!!!

Sent from stephanie

Take action to support sustainable water policy in the Edisto Basin

Sherrie <sherrie@edisto.biz>

Fri 9/7/2018 4:04 PM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

Cc: 'J. J. Jowers, Jr.' <JJ@edisto.biz>;

RECEIVED

SEP 07 2018

**Clerk, Board of Health
and Environmental Control**

Please support western capacity use expansion.

Sherrie E. Etheridge

*Edisto Engineers and Surveyors, Inc.
650 Broughton Street (29115)
PO Box 1725*

Orangeburg, SC 29116

Phone: 803.536.1104

Fax: 803.531.1815

Email: sherrie@edisto.biz

Western Capacity Use Expansion

matthew@mctimberco.com

Fri 9/7/2018 10:01 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED
SEP 07 2018
Clerk, Board of Health
and Environmental Control

My name is Matthew Summers, and I am a property owner on the Edisto River, as well as, a lifelong resident of the Edisto River Basin. I am contacting you today to give my support in the Western Capacity Use Expansion. This issue is very important to all who reside up and down the Edisto Watershed and the sustainability of this very important ecosystem.

Regards,

Matthew Summers

9/10/2018

Mail - LUCASLM@dhec.sc.gov

CAPACITY USE IN WESTERN, Edisto BASIN

Johney Haralson <johney.haralson.bwsi@statefarm.com>

Fri 9/7/2018 9:24 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

I AM VERY MUCH IN SUPPORT OF CAPACITY USE IMPLIMENTATION IN Edisto basin-tks you jlh

Sustainable water policy in the Edisto basin

Jeff Irick <jeff@edisto.biz>

Fri 9/7/2018 12:13 PM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

Please support western capacity use expansion.
Thanks,

A. JEFF IRICK
EDISTO ENGINEERS & SURVEYORS, INC.
(803)536-1104

Support

Fletcher Brabham <f.brabham@yahoo.com>

Fri 9/7/2018 10:45 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

You have my support for the western capacity use expansion

Sent from my iPhone

Capacity Use

RECEIVED

SEP 07 2018

**Clerk, Board of Health
and Environmental Control**

SMOAK, DONALD H JR <DSMOAK@scana.com>

Fri 9/7/2018 12:15 PM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

I care about the future of South Carolina's water resources, and I support the expansion of Capacity Use into the "Western Counties" of South Carolina.

Don Smoak
35 Steeple Road,
Johnston, SC 29832

Farm Water Usage

RECEIVED

AUG 30 2018

**Clerk, Board of Health
and Environmental Control**

Courtneylove Gowans <clovegowans@gmail.com>

Thu 8/30/2018 2:47 PM

To: BoardClerk <BoardClerk@dhec.sc.gov>;

Dear Board Members,

Please develop a usage plan as soon as possible that limits amounts of water withdrawals available to Farms on the Edisto and any other applicable rivers. Our beautiful state has a rich, watery legacy of rivers that are in jeopardy from uncontrolled or unreasonable withdrawal amounts based on data for the past 10 years or more.

I have personally experienced rivers running almost dry due to situations like this out West. It affects the balance of these ecosystems AND the enjoyment of the people who live nearby. Please protect our SC Waterways.

Thank you for your consideration in these matters,

Courtneylove Gowans

Sent from my iPhone

Untitled

Chip Summers <csummers@bswcpa.com>

Fri 9/7/2018 10:10 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED

SEP 07 2018

**Clerk, Board of Health
and Environmental Control**

Please vote for the edisto bill

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Unless the above message ("this message") expressly provides that the statement contained therein ("the statements") are intended to constitute written tax advice within the meaning of IRS Circular 230 §10.37, the sender intends by this message to communicate general information for discussion purposes only, and you should not, therefore, interpret the statements to be written tax advice or rely on the statements for any purpose. The sender will conclude that you have understood and acknowledged this important cautionary notice unless you communicate to the sender any questions you may have in direct electronic reply to this message.

Brodie, Summers, and Wilkes, LLP, CPA's, PO Box 584, Orangeburg, SC 29116 Phone 803-536-6866, Fax 803-534-1084

Western Capacity Use Expansion Support

J. J. Jowers, Jr. <JJ@edisto.biz>

Fri 9/7/2018 10:16 AM

To: Lucas, Lisa M. <LUCASLM@dhec.sc.gov>;

RECEIVED

SEP 07 2018

**Clerk, Board of Health
and Environmental Control**

 1 attachments (3 MB)

WCAPU Expansion Letters.pdf;

Ms. Longshore-

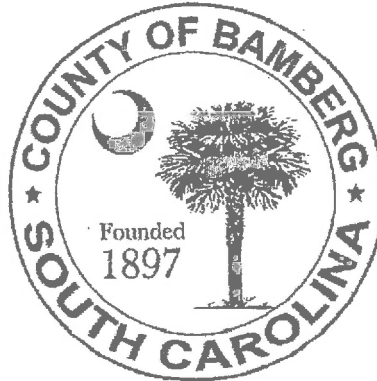
Please mark me personally in support of a yes vote on the Western Capacity Use Expansion . Also, if possible, please make sure the attached letters are included in the Board Packets. Thank you for your assistance.

J.J. Jowers, Jr., P.E., P.L.S.
Edisto Engineers and Surveyors, Inc.
650 Broughton Street
Orangeburg, SC 29115
803-536-1104

County of Bamberg

COUNCIL MEMBERS

Trent Kinard, Vice-Chairman – District #1
Sharon Hammond – District #2
Larry Haynes – District #3
Joe Guess, Jr. – District #4
Isaiah Odom – District #5
Evert Comer, Jr. – District #6
Clint Carter, Chairman – District #7



Joey R. Preston
Administrator
Rose R. Shepherd
Clerk to Council

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

September 4, 2018

Mr. Rob Devlin
SC Department of Health & Environmental Control
2200 Bull Street
Columbia, SC 29201

Dear Mr. Devlin:

I'm writing to you today to encourage the Board of Health and Environmental Control to establish the Western Capacity Use Area to improve the oversight of large water consumers in the region. As a lifelong resident of Bamberg County and a the Vice Chairman of the Bamberg County Council, I am witnessing firsthand the steady decline of our region's natural resources, in particular, the depletion of water coming from the South Edisto River. I am hopeful the implementation of these new measures can preserve river's water, thereby safeguarding its continued availability to our local farmer's and citizens alike.

Because local farmers, utilities, recreationists, and businesses rely on access to our water resources, reasonable restrictions and monitoring are needed to ensure long term sustainability. DHEC's current proposal of requiring permits for large volume usage of the region's water resources seems both reasonable and non-invasive in its approach while effectively working to prevent any serious water crises that could negatively impact the long term livelihood of our residents and local farmers who rely daily on this resource's availability. The proposal to monitor large capacity water users also poses additional positive impacts of the users' enhanced self-management of their water usage, which in turn, will aid in the sustainability of this vital natural resource.

I am aware that DHEC's proposal has not been well received by several state entities, with many asking that the decision be tabled until more research is available in the new year; however, the data we currently have shows a distinctive decline in water levels throughout the region and the increasing likelihood of water demands exceeding water supplies within 30 years. Additional studies are not needed to know supplies are dwindling and our waterways are being jeopardized.

1234 NORTH STREET P.O. BOX 149 BAMBERG, SOUTH CAROLINA 29003

Phone: (803) 245-5191 Fax: (803) 245-3027

In 2014 the South Edisto Fork was identified as the 6th most endangered river in America, and in 2015, the entire South Edisto River was named as the 5th most endangered river in our nation. If we have any hope of preserving these waterways while sustaining their resources for our farming and daily life, we must implement measures now.

Since the current plan does not seek to impose limits of water usage but rather intends to document, approve, and monitor the usage needs being requested, it would appear this endeavor could be a beneficial data-gathering enterprise that would inform future conservation and sustainability studies that will be helpful to our region and the longevity of its water resources. For these reasons, I endorse the proposed Capacity Use Area Expansion and hope the Board will approve and implement it as soon as possible.

Kind regards,



Trent Kihard, Vice Chairman
Bamberg County Council



Department of Public Utilities

City of Orangeburg
1016 Russell Street
Post Office Box 1057
Orangeburg, South Carolina 29116-1057
(803) 268-4000 • Fax (803) 531-3803
www.orbgdpu.com

RECEIVED

SEP 07 2018

Clerk, Board of Health
and Environmental Control

September 4, 2018

SCDHEC Board of Directors
2600 Bull Street
Columbia, SC 29202

RE: Western Capacity Use Area

Dear Board Members:

I write to express my support for DHEC's planned creation of a Western Capacity Use Area. The Department of Public Utilities provides water to a population of approximately 50,000 and we play a vital role in the economic prosperity of the region by providing utilities to business and industry; none more critical than water. We appreciate the work of DHEC as they protect our most valuable resource.

We present this letter as a demonstration of our full support of effort to protect and preserve our natural resources; in particular the North Fork of the Edisto River. We believe this is a reasonable step in the right direction to ensure that all entities are treated equally with respect to regulations concerning our most precious and natural resource. The Western Capacity Use Area will be a positive step in helping to ensure that groundwater is available for future generations and the citizens we serve.

In closing, please let me know if there is anything the Department of Public Utilities can assist you with in the future.

Sincerely,

Eric Odom, PE
Director
Water Division

DEO/dw
W-18-0354

cc: Warren Harley, DPU Manager
DPU file 400-1.2

RECEIVED

SEP 07 2013

Clerk, Board of Health
and Environmental Control

604 Airport Road
Bamberg SC 29003
(803) 245-4427 Tel.
www.bambergcounty-chamber.org
info@bambergcounty-chamber.org



To: South Carolina Board of Health and Environmental Control

The Bamberg County Chamber of Commerce supports the proposed Capacity Use Area Expansion. Unchecked use of our limited water resources has the potential to undermine the economic viability of our area. Reasonable monitoring and compliance measures to ensure long term viability is long past due. Please vote in favor of this necessary designation.

A handwritten signature in cursive script that reads 'Jerry Bell'.

Jerry Bell, Bamberg County Chamber of Commerce Director

Board of Public Works

2340 Main Highway • P.O. Box 1180
Bamberg, S.C. 29003-0780



WILL MARTIN, Manager

SC DHEC
2600 Bull St.
Columbia, SC 29003

RECEIVED

SEP 07 2018

**Clerk, Board of Health
and Environmental Control**

Re: Capacity Use Area Expansion

The Bamberg Board of Public Works (BPW) serves approximately 2800 customers in Bamberg, Barnwell, and Orangeburg Counties. BPW fully supports the proposed expansion of the Capacity Use Area. BPW relies exclusively on our wells to supply our customers with water. The proliferation of large scale wells being constructed in our area the past decade is alarming and could lead to a shortage of our source water. As we understand, DHEC currently has no oversight authority over placement or construction of these wells. We recognize that reasonable oversight is necessary to protect the sustainability of our shared water resources and hope that you will vote in favor of this expansion.

Sincerely,

Will Martin

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

November 8, 2018

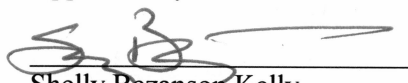
() ACTION/DECISION

(X) INFORMATION

- I. TITLE:** Health Regulation Administrative and Consent Orders.
- II. SUBJECT:** Health Regulation Administrative Orders, Consent Orders, and Emergency Suspension Orders for the period of September 1, 2018, through September 30, 2018.
- III. FACTS:** For the period of September 1, 2018, through September 30, 2018, Health Regulation reports one (1) Administrative Order, ten (10) Consent Orders, and one (1) Emergency Suspension Order totaling \$25,100 in assessed monetary penalties.

Health Regulation Bureau	Facility, Provider, or Equipment Type	Administrative Orders	Consent Orders	Emergency Suspension Orders	Assessed Penalties
Health Facilities Licensing	Adult Day Care Facility	0	1	0	\$3,600
	Home Health Agency	0	2	0	\$700
	Tattoo Facility	0	1	0	\$1,300
EMS & Trauma	Ambulance Services Provider	1	2	0	\$7,000
	Paramedic	0	2	0	\$1,800
	Emergency Medical Technician	0	0	1	\$0
Radiological Health	Dental X-Ray Facility	0	1	0	\$1,700
	Medical X-Ray Facility	0	1	0	\$9,000
TOTAL		1	10	1	\$25,100

Approved By:


Shelly Bezanson Kelly
Director of Health Regulation

HEALTH REGULATION ENFORCEMENT REPORT
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

November 8, 2018

Bureau of Health Facilities Licensing

Facility Type	Total # of Licensed Home Health Agencies in South Carolina
Home Health Agency	92

1. Homecare of the Regional Medical Center (Home Health Agency) – Orangeburg, SC

Inspections and Investigations: The Department visited Homecare of the Regional Medical Center multiple times to conduct general inspections, complaint investigations, and follow-up inspections. Prior to this enforcement action, the Department visited Homecare most recently on July 18, 2017 to conduct a complaint investigation.

Violations: During the July 18, 2017 investigation, the Department cited Homecare for violating Regulation 61-77, Standards for Licensing Home Health Agencies. Specifically, the Department cited Homecare for providing services to patients in Bamberg County prior to the Department's issuance of an amended license on April 14, 2017, adding Bamberg County to its licensed service area. According to the Home Health Agency Regulation, no home health agency may serve counties other than those identified on the face of the license.

Enforcement Action: By Consent Order, the Department assessed a \$300 monetary penalty against Homecare, which was paid in full on August 31, 2018.

Prior Actions: None.

2. Methodist Manor Home Health (Home Health Agency) – Florence, SC

Inspections and Investigations: The Department visited Methodist Manor Home Health multiple times to conduct general inspections, complaint investigations, and follow-up inspections. Prior to this enforcement action, the Department visited Methodist Manor Home Health most recently on August 3, 2017 to conduct a general inspection and also issued two citations-by-mail.

Violations: During the August 3, 2017 inspection, the Department cited Methodist Manor for violating Regulation 61-77, Standards for Licensing Home Health Agencies. Specifically, the Department cited Methodist Manor for not reviewing patient treatment plans and not documenting a staff member to coordinate tuberculosis control activities. In addition, the Department issued a citation-by-mail to Methodist Manor on September 8, 2017 and again on October 9, 2017 for not providing a plan of correction for the cited violations from the August 3, 2017 inspection.

Enforcement Action: By Consent Order, the Department assessed a \$400 monetary penalty against Methodist Manor, which was paid in full on September 4, 2018.

Prior Actions: None.

Facility Type	Total # of Participants	Total # of Licensed Facilities in South Carolina
Adult Day Care	4,680	96

3. Total Comfort Adult Day Care (Adult Day Care Facility) – Holly Hill, SC

Inspections and Investigations: The Department visited Total Comfort Adult Day Care multiple times for general inspections and follow-up inspections and also issued four citations-by-mail to the facility. Prior to this enforcement action, the Department visited Total Comfort most recently on March 13, 2018 to conduct a follow-up inspection.

Violations: As a result of several inspections from 2016 to 2018, the Department cited Total Comfort for violating Regulation 61-75, Standards for Licensing Day Care Facilities for Adults. Specifically, the Department cited Total Comfort for the following: four (4) times for failing to submit a timely plan of correction for cited violations; two (2) times for failing to have a record of annual fire safety inspection; two (2) times for failing to have staff health assessment documentation; one (1) time for failing to have fire safety training documentation; two (2) times for failing to have infection control training documentation; two (2) times for failing to have participants’ rights training documentation; two (2) times for failing to have records and confidentiality training documentation; one (1) time for failing to have staff annual performance evaluation documentation; one (1) time for failing to include antiseptic cleaner in the first aid kit; one (1) time failing to have participants’ photographs and social security numbers in the participant records; two (2) times for failing to have contact information for participants’ personal physician; two (2) times for failing to have documentation of a signed agreement between the facility and participant stating the amount of fees for listed services; two (2) times for failing to have written acknowledgments of the Statement of Rights of Adult Day Care Participants; one (1) time for failing to have documentation of fire drills; and two (2) times for failing to have annual tuberculosis risk assessment documentation.

Enforcement Action: By Consent Order, the Department assessed a \$3,600 monetary penalty against Total Comfort. Total Comfort was required to pay \$1,800 of the assessed monetary penalty to the Department within 30 days, which they paid on September 18, 2018. The Department is holding the remaining \$1,300 in abeyance for six months. In addition, the Department required Total Comfort to take action to correct the cited violations and to participate in a compliance assistance meeting with the Department.

Prior Actions: None.

Facility Type	Total # of Licensed Facilities in South Carolina
Tattoo Facility	121

4. 123 East Coast Ink (Tattoo Facility) – Easley, SC

Inspections and Investigations: The Department visited 123 East Coast Ink multiple times to conduct general inspections and follow-up inspections. Prior to this enforcement action, the Department visit 123 East Coast Ink most recently on September 14, 2017 to conduct a general inspection and cited the facility for violations. Additionally, the Department issued citations-by-mail on November 8, 2017 and November

16, 2017 for 123 East Coast Ink’s failure to submit a plan of correction to the September 14, 2017 inspection violations.

Violations: As a result of inspections and citations-by-mail, the Department cited 123 East Coast Ink for violating Regulation 61-111, Standards for Licensing Tattoo Facilities. Specifically, the Department cited 123 East Coast Ink for the following: two (2) times for failing to submit an acceptable plan of correction to the cited violations from the September 14, 2017 inspection; one (1) time for failing to document annual staff training for OSHA standards in bloodborne pathogens; and, one (1) time for failing to ensure that tattoo items packaged and sterilized by autoclave (a pressure chamber used for sterilization) were labeled with the date of sterilization.

Enforcement Action: By Consent Order, the Department assessed a \$1,300 monetary penalty against 123 East Coast Ink. The Department required 123 East Coast Ink to pay \$650 within 30 days, which they paid on September 25, 2018. The Department is holding the remaining \$650 in abeyance for six months. In addition, the Department required 123 East Coast Ink to take action to correct the cited violations and to participate in a compliance assistance meeting with the Department.

Prior Actions: None.

Bureau of Emergency Medical Services and Trauma

Provider Type	Total # of Licensed Providers in South Carolina
Ambulance Services Provider	272

5. Advance Medical Transport LLC (Ambulance Services Provider)

Inspections and Investigations: On November 27, 2017, the Department was notified that an employee of Advance Medical Transport LLC (AMT) worked as an emergency medical technician (EMT) without a valid South Carolina EMT certification. The Department conducted an investigation that found the AMT employee performed patient care within the scope of an EMT on eight ambulance runs while the employee did not have a valid SC EMT certification.

Violations: As a result, the Department found that AMT violated the EMS Act and Regulation 61-7, Emergency Medical Services by allowing an uncertified person to perform patient care. If the Department finds that a service has allowed uncertified personnel to perform patient care, the EMS Act authorizes the Department to impose a civil monetary penalty up to five hundred dollars per offense per day to a maximum of ten thousand dollars and revoke or suspend the provider’s license or permit.

Enforcement Action: By Administrative Order, the Department assessed a \$2,000 monetary penalty against AMT, which they paid in full on October 26, 2018.

Prior Actions: None.

6. Personal Care Ambulance, Inc. (Ambulance Services Provider)

Inspections and Investigations: On January 17, 2018, Personal Care Ambulance, Inc. (PCA) notified the Department that a PCA employee worked as an emergency medical technician (EMT) without a valid South

Carolina EMT certification. The Department conducted an investigation that found the PCA employee performed patient care within the scope of an EMT on 51 ambulance runs while the employee did not have a valid SC EMT certification.

Violations: As a result, the Department found that PCA violated the EMS Act and Regulation 61-7, Emergency Medical Services by allowing an uncertified person to perform patient care. If the Department finds that a service has allowed uncertified personnel to perform patient care, the EMS Act authorizes the Department to impose a civil monetary penalty up to five hundred dollars per offense per day to a maximum of ten thousand dollars and revoke or suspend the provider's license or permit.

Enforcement Action: By Consent Order, the Department assessed a \$2,500 monetary penalty against PCA, which they paid in full on September 4, 2018.

Prior Actions: None.

7. Aiken County Emergency Services (Ambulance Services Provider)

Inspections and Investigations: On May 1, 2018, Aiken County Emergency Services (ACEMS) notified the Department that an ACEMS employee worked as an emergency medical technician (EMT) without a valid South Carolina EMT certification. The Department conducted an investigation that found the ACEMS employee performed patient care within the scope of an EMT on 33 ambulance runs while the employee did not have a valid SC EMT certification.

Violations: As a result, the Department found that ACEMS violated the EMS Act and Regulation 61-7, Emergency Medical Services by allowing an uncertified person to perform patient care. If the Department finds that a service has allowed uncertified personnel to perform patient care, the EMS Act authorizes the Department to impose a civil monetary penalty up to five hundred dollars per offense per day to a maximum of ten thousand dollars and revoke or suspend the provider's license or permit.

Enforcement Action: By Consent Order, the Department assessed a \$2,500 monetary penalty against ACEMS. The Department required ACEMS to pay \$500 within 30 days, which they paid on September 21, 2018. The Department is holding the remaining \$2,000 in abeyance for 12 months.

Prior Actions: None.

Provider Type	Total # of Certified Providers in South Carolina
Paramedic	3,773

8. Richard L. Belge (Paramedic)

Inspections and Investigations: On June 26, 2018, the Department initiated an investigation into the EMS crew of Mr. Belge and his paramedic partner, Donald Nash, and their care of a minor patient while the EMS crew was working for Lancaster County EMS. The Department found that Mr. Belge and Mr. Nash initiated care of a minor patient with nausea and vomiting in a hotel. The EMS crew advised the minor patient that because the minor's parents were unavailable to consent to care and transport, the EMS crew could neither treat nor transport the patient. The EMS crew did not obtain the consent of the patient or parents for the discontinuation of care and abandonment. The EMS crew thereafter departed the scene and left the patient

at the hotel. After returning to the Lancaster County EMS station, Mr. Belge notified and discussed his concerns of the call with a supervisor and operations manager. Upon the instructions of the supervisor and operations manager, the EMS crew returned to the hotel to provide treatment to the patient and transported the patient to a hospital emergency department. The Department also found that the EMS crew's documentation for this call failed to describe the EMS crew's departure from the hotel, arrival at the EMS station, and return to the hotel for treatment and transport of the patient to the hospital.

Violations: The Department found that Mr. Belge violated the EMS Act and Regulation 61-7, Emergency Medical Services by initiating care of a patient at the scene of illness then discontinuing such care and abandoning the patient without the patient's consent and without providing for the further administration of care by an equal or higher medical authority. In addition, the Department found that Mr. Belge falsified documentation required by the Department, specifically the patient care report (PCR).

Enforcement Action: By Consent Order, the Department assessed a \$900 monetary penalty against Mr. Belge. The Department required Mr. Belge to pay \$225 within 6 months, which he paid on September 21, 2018. The Department is holding the remaining \$675 in abeyance for 12 months. The Department also suspended Mr. Belge's paramedic certificate for 12 months and is requiring Mr. Belge to successfully complete a National Association of Emergency Medical Technicians (NAEMT) Principles of Ethics and Personal Leadership course within 12 months.

Prior Actions: None.

9. Donald Lawrence Nash (Paramedic)

Inspections and Investigations: On June 26, 2018, the Department initiated an investigation into the EMS crew of paramedics, Mr. Nash and Mr. Belge, and their care of a minor patient while the EMS crew was working for Lancaster County EMS. The Department found that the EMS crew initiated care of a minor patient with nausea and vomiting in a hotel. The EMS crew advised the minor patient that because the minor's parents were unavailable to consent to care and transport, the EMS crew could neither treat nor transport the patient. The EMS crew did not obtain the consent of the patient or parents for the discontinuation of care and abandonment. The EMS crew thereafter departed the scene and left the patient at the hotel. After returning to the Lancaster County EMS station, Mr. Nash's partner, Mr. Belge, notified and discussed his concerns of the call with a supervisor and operations manager. Upon the instructions of the supervisor and operations manager, the EMS crew returned to the hotel to provide treatment to the patient and transported the patient to a hospital emergency department. The Department also found that the EMS crew's documentation for this call failed to describe the EMS crew's departure from the hotel, arrival at the EMS station, and return to the hotel for treatment and transport of the patient to the hospital.

Violations: The Department found that Mr. Nash violated the EMS Act and Regulation 61-7, Emergency Medical Services by initiating care of a patient at the scene of illness then discontinuing such care and abandoning the patient without the patient's consent and without providing for the further administration of care by an equal or higher medical authority. In addition, the Department found that Mr. Nash falsified documentation required by the Department, specifically the patient care report (PCR).

Enforcement Action: By Consent Order, the Department assessed a \$900 monetary penalty against Mr. Nash. The Department is requiring Mr. Nash to pay \$225 within 6 months and will hold the remaining \$675 in abeyance for 12 months. The Department also suspended Mr. Nash's paramedic certificate for 12 months and is requiring Mr. Nash to successfully complete a National Association of Emergency Medical Technicians (NAEMT) Principles of Ethics and Personal Leadership course within 12 months.

Prior Actions: None.

Provider Type	Total # of Certified Providers in South Carolina
EMT	6,098

10. DuWayne William Ryan Stender (EMT)

Inspections and Investigations: On August 27, 2018, the Department was notified of Mr. Stender’s arrest. The Department initiated an investigation and found that Mr. Stender had been arrested for committing aggravated assault and family violence battery.

Violations: The Department found that Mr. Stender’s arrest for aggravated assault and family violence battery constituted misconduct because they are criminal offenses that may involve moral turpitude, drugs, or gross immorality. Due to Mr. Stender’s arrest for these offenses, the Department was authorized to take action to immediately suspend Mr. Stender’s emergency medical technician (EMT) certificate pending further investigation pursuant to S.C. Code Section 44-1-140, the EMS Act, and Regulation 61-7, Emergency Medical Services.

Enforcement Action: By Emergency Suspension Order, the Department suspended Mr. Stender’s EMT certificate on an emergency basis pending further investigation.

Prior Actions: None.

Bureau of Radiological Health

Facility Type	Total # of Registered Facilities in South Carolina
Dental X-Ray Facility	1,725

11. Pitner Orthodontics (Dental X-Ray Facility) – Columbia, SC

Inspections and Investigations: On January 8, 2018, the Department conducted a general inspection and found that Pitner Orthodontics failed to show current records of equipment performance testing. The Department previously cited the same violations during inspections on October 11, 2007 and February 12, 2013.

Violations: As a result, the Department found that Pitner repeatedly violated Regulation 61-64, X-Rays (Title B), by failing to complete equipment performance testing.

Enforcement Action: By Consent Order, the Department assessed a \$1,700 monetary penalty against Pitner. The Department is requiring Pitner to pay \$425 within 30 days with the remaining \$1275 to be held in abeyance for 36 months.

Prior Actions: None.

Facility Type	Total # of Registered Facilities in South Carolina
Medical X-Ray Facility	880

12. Lancaster One Medical (Medical X-Ray Facility) – Lancaster, SC

Inspections and Investigation: On February 7, 2018, the Department conducted a routine inspection and found that Lancaster One Medical failed to assure that all x-ray machines are only operated by a radiologic technologist possessing a valid certificate from the South Carolina Radiation Quality Standards Association (SCRQSA). The Department previously cited the same violations during inspections on August 8, 2013 and May 26, 2016.

Violations: As a result, the Department found Lancaster One Medical repeatedly violated Regulation 61-64, X-Rays (Title B), by failing to assure all x-ray machine operators possessed a valid certificate from the SCRQSA.

Enforcement Action: By Consent Order, the Department assessed a \$9,000 monetary penalty against Lancaster One Medical. The Department is requiring Lancaster One Medical to pay \$2,250 within 30 days with the remaining \$6,750 to be held in abeyance for 24 months.

Prior Actions: None.

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 8, 2018

_____ ACTION/DECISION

 X INFORMATION

1. **TITLE:** Administrative and Consent Orders issued by the Office of Environmental Affairs.
2. **SUBJECT:** Administrative and Consent Orders issued by the Office of Environmental Affairs during the period September 1, 2018 through September 30, 2018.
3. **FACTS:** For the period of September 1, 2018 through September 30, 2018, the Office of Environmental Affairs issued ninety (90) Consent Orders with total assessed civil penalties in the amount of one-hundred eighty-one thousand, three hundred ninety-five dollars \$181,395.00. No Administrative Orders were issued for the period of September 1, 2018 through September 30, 2018.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Agreements	Consent Orders	Assessed Penalties
Land and Waste Management					
UST Program	0	0	0	1	\$1,000.00
Aboveground Tanks	0	0	0	0	0
Solid Waste	0	0	0	1	\$3,500.00
Hazardous Waste	0	0	0	1	\$38,000.00
Infectious Waste	0	0	0	0	0
Mining	0	0	0	0	0
SUBTOTAL	0	0	0	3	\$42,500.00
Water					
Recreational Water	0	0	0	32	\$35,660.00
Drinking Water	0	0	0	2	\$2,000.00
Water Pollution	0	0	0	5	\$14,680.00
Dam Safety	0	0	0	0	0
SUBTOTAL	0	0	0	39	\$52,340.00
Air Quality					
SUBTOTAL	0	0	0	5	\$40,830.00
Environmental Health Services					
Food Safety	0	0	0	43	\$45,725.00
Onsite Wastewater	0	0	0	0	0
SUBTOTAL	0	0	0	43	\$45,725.00
OCRM					
SUBTOTAL	0	0	0	0	0
TOTAL	0	0	0	90	\$181,395.00

Submitted by:



Myra C. Reece
Director of Environmental Affairs

**ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 8, 2018**

BUREAU OF LAND AND WASTE MANAGEMENT

Underground Storage Tank Enforcement

- 1) Order Type and Number: Consent Order 18-0157-UST
Order Date: September 10, 2018
Individual/Entity: **Tiger Stop South, LLC**
Facility: Blue Water 17
Location: 100 Buckwalter Place Boulevard
Bluffton, SC 29910
Mailing Address: 78 Ashley Point Drive, Suite 300
Charleston, SC 29407
County: Beaufort
Previous Orders: None
Permit/ID Number: 19611
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 *et seq.* (2002 and Supp. 2014); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann. Regs. 61-92.280.20(c)(1)(ii) (2017).

Summary: Tiger Stop South, LLC (Individual/Entity) owns and operates underground storage tanks located in Bluffton, South Carolina. On July 23, 2018, the Department conducted a routine inspection and issued a Notice of Alleged Violation because there was a stick in the drop tube shutoff valve on the diesel tank. The stick was removed while the Department's Inspector was on site. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Control Regulation, as follows: failed to maintain overfill prevention equipment on an underground storage tank system.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand dollars (**\$1,000.00**).

Solid Waste Enforcement

- 2) Order Type and Number: Consent Order 18-16-SW
Order Date: September 10, 2018
Individual/Entity: **P.A.R. Grading & Hauling, Inc.**
Facility: PAR Grading Class 1 Landfill
Location: 2738 Country Club Road
Spartanburg, SC
Mailing Address: P.O. Box 1210
Spartanburg, SC 29304
County: Spartanburg
Previous Orders: None
Permit/ID Number: 422627-1701

Violations Cited: South Carolina Solid Waste Policy and Management Act of 1991, 15A S.C. Code Ann. Laws, § 44-96-10 et seq. (2002 & Supp. 2016) (Act) and Solid Waste Management: Solid Waste Landfills and Structural Fill, 8 S.C. Code Ann. Regs., R. 61-107.19 (2012) (Regulation).

Summary: P.A.R. Grading & Hauling, Inc. (Individual/Entity), located in Spartanburg, South Carolina, owns and operates PAR Grading Class 1 Landfill. The Department conducted routine inspections on July 6, 2017, August 14, 2017, and March 28, 2018. The Individual/Entity has violated the South Carolina Solid Waste Policy and Management Act and the Solid Waste Management: Solid Waste Landfills and Structural Fill Regulation as follows: unauthorized waste was dumped inside of the working face; unauthorized waste was dumped outside of the working face in a permitted mining area, and unauthorized waste was not removed within seventy-two (72) hours.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of three thousand, five hundred dollars **(\$3,500.00)**.

Hazardous Waste Enforcement

3) Order Type and Number: Consent Order 18-19-HW
Order Date: September 24, 2018
Individual/Entity: **Johnson Controls Battery Group, Inc.**
Facility: Johnson Controls Battery Group, Inc.
Location: 1800 Paper Mill Road
Florence, SC 29506
Mailing Address: Same
County: Florence
Previous Orders: 14-07-HW (\$7,000.00)
15-17-HW (\$15,000.00)
16-04-HW (\$35,000.00)
17-15-HW (\$10,000.00)
Permit/ID Number: SCR 000 771 451
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2016) and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2017).

Summary: Johnson Controls Battery Group, Inc. (Individual/Entity) operates a battery recycling center at its facility located at 1800 Paper Mill Road, in Florence, South Carolina. The Department and EPA conducted an inspection on April 10, 2018. The Individual/Entity violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to ensure each container is labeled or marked clearly with the EPA Hazardous Waste Number(s) and the words: "Hazardous Waste - federal laws prohibit improper disposal;" failed to accurately determine if a waste was a hazardous waste; failed to maintain and operate the facility to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste; failed to record weekly hazardous waste inspections in an inspection log or summary; failed to clean up a hazardous waste discharge that occurred during processing; failed to maintain the primary barrier of the containment building so that it was free of cracks or gaps; failed to maintain the level of stored/treated waste within the containment walls so that the height of the wall was not exceeded; failed to maintain the annual waste minimization report in the operating record; failed to include the

types and quantities of hazardous waste shipped offsite on the fourth quarter 2017 report; failed to submit a revised copy of the contingency plan to the local authorities, and State and local emergency response teams; failed to ensure facility personnel successfully completed the training program required by regulation in section R.61-79.265.16(a) within six (6) months of employment; failed to maintain lamps in a manner to prevent a release and to keep such containers closed; failed to label or mark clearly each container of universal lamps; accumulated universal waste lamps onsite for longer than one year; and, failed to demonstrate the length of time universal waste had been accumulated from the date it became a waste.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of thirty-eight thousand dollars (**\$38,000.00**).

BUREAU OF WATER

Recreational Waters Enforcement

- 4) Order Type and Number: Consent Order 18-159-RW
Order Date: September 4, 2018
Individual/Entity: **Paramount Hotels, LLC**
Facility: Hampton Inn Newberry
Location: 1201 Nance Street
Newberry, SC 29108
Mailing Address: 205 Regency Executive Park Drive
Charlotte, NC 28217
County: Newberry
Previous Orders: 16-097-RW (\$510.00)
Permit/ID Number: 36-1001B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Paramount Hotels, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 11, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the depth marker tiles were unsettled and some were cracked; a ladder was missing bumpers; the pool furniture was not at least four feet from the edge of the pool; only one bathroom was provided and there was no soap in the bathroom; the drinking water fountain was not operating; the pump room was not locked; the pH level was not within the acceptable range of water quality standards; the main drain grates were not in place; the shepherd's crook was not attached to a non-telescoping pole and was not the appropriate length; the pool rules sign did not have all of the required rules; the bound and numbered log book was not maintained on a daily basis; and the bound and numbered log book was not maintained at least 3 times per week by the pool operator of record. On June 14, 2018, a follow-up inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

- 5) Order Type and Number: Consent Order 18-160-RW
Order Date: September 4, 2018
Individual/Entity: **Tilghman Forest Homeowners Association**
Facility: Tilghman Forest
Location: 1020 Tilghman Forest Drive
North Myrtle Beach, SC 29582
Mailing Address: Same
County: Horry
Previous Orders: 16-116-DW (\$680.00)
Permit/ID Number: 26-L06-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Tilghman Forest Homeowners Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 1, 2018, and June 19, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was not tight and secure; a ladder was missing bumpers; a skimmer lid was cracked; the pool rules sign was faded; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; and the bound and numbered log book was not maintained on a daily basis. On August 2, 2018, a follow-up inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand, one hundred twenty dollars **(\$1,120.00)**.

- 6) Order Type and Number: Consent Order 18-161-RW
Order Date: September 4, 2018
Individual/Entity: **Palmetto Investment Group, Inc.**
Facility: Hampton Inn
Location: 1021 Clemson Frontage Road
Columbia, SC 29223
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 40-1075B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Palmetto Investment Group, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2018, and July 9, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there were non-pool related items stored in the equipment room; the chlorine and pH levels were not within the acceptable range of water quality standards; the bound and numbered log book was not maintained on a daily basis and was not maintained a minimum of three times per week by the pool operator of record; a bolt cover was missing; and the step edge tile stripe was not within one inch of the edge of the step.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**.

7) Order Type and Number: Consent Order 18-162-RW
Order Date: September 4, 2018
Individual/Entity: **Palmetto Bay Villas HPR No. 1 Owners Association, Inc.**
Facility: Palmetto Bay Villas
Location: 53 Delander Court
Hilton Head Island, SC 29928
Mailing Address: P.O. Box 6476
Hilton Head Island, SC 29938
County: Beaufort
Previous Orders: None
Permit/ID Number: 07-069-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Palmetto Bay Villas HPR No. 1 Owners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 15, 2018, and July 16, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there were cracked floats on the lifeline; the deck and pool coping were chipped; a skimmer cover was broken; the chlorine level was not within the acceptable range of water quality standards; the closing time posted on the pool rules sign was not accurate; and the bound and numbered log book was not maintained a minimum of three times per week by the pool operator of record.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**.

8) Order Type and Number: Consent Order 18-163-RW
Order Date: September 4, 2018
Individual/Entity: **Historic Charleston, LLC**
Facility: Homewood Suites by Hilton
Location: 415 Meeting Street
Charleston, SC 29403
Mailing Address: 8832 Blakeney Professional Drive
Charlotte, NC 28277
County: Charleston
Previous Orders: None
Permit/ID Number: 10-1279B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Historic Charleston, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 23, 2018, and June 26, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the log book was not properly bound or numbered and was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 9) Order Type and Number: Consent Order 18-164-RW
Order Date: September 4, 2018
Individual/Entity: **Bordeleaux Owners Association, Inc.**
Facility: Bordeleaux Condos
Location: 220 3rd Avenue
Charleston, SC 29403
Mailing Address: Same
County: Charleston
Previous Orders: 16-212-RW (\$680.00)
Permit/ID Number: 10-1171B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Bordeleaux Owners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 30, 2018, and June 29, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; the life ring rope was too short; the shepherd's crook was not permanently attached to the handle; the bound and numbered log book was not maintained on a daily basis; and there were chlorine pucks in the skimmer baskets.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, three hundred sixty dollars **(\$1,360.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 10) Order Type and Number: Consent Order 18-165-RW
Order Date: September 7, 2018
Individual/Entity: **Spinnaker at Shipyard Owners' Association**
Facility: Spinnaker at Shipyard
Location: 44 Barcelona Road
Hilton Head, SC 29928
Mailing Address: 20 Executive Park Road, Suite 200
Hilton Head, SC 29928
County: Beaufort
Previous Orders: 15-102-RW (\$680.00)
Permit/ID Number: 07-1202C & 07-259-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Spinnaker at Shipyard Owners' Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a kiddie pool and a spa. On May 25, 2018, and June 27, 2018, the kiddie pool and spa were inspected, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and a skimmer lid was not secure.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of two thousand, forty dollars **(\$2,040.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 11) Order Type and Number: Consent Order 18-166-RW
Order Date: September 7, 2018
Individual/Entity: **WC Columbia, LLC**
Facility: Pulaski Square Apartments
Location: 520 Pendleton Street
Columbia, SC 29201
Mailing Address: 500 South Front Street, 10th Floor
Columbus, OH 43215
County: Richland
Previous Orders: None
Permit/ID Number: 40-1147B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: WC Columbia, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 24, 2018, and June 29, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the water level was too low; the pool equipment room was not locked; a gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; only one "Shallow Water – No Diving Allowed" sign was posted; only one "No Lifeguard On Duty – Swim At Your Own Risk" sign was posted; the bound and numbered log book was not maintained on a daily basis; and there were chlorine sticks in the skimmer baskets.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 12) Order Type and Number: Consent Order 18-167-RW
Order Date: September 7, 2018
Individual/Entity: **HMV Hotels, LLC**
Facility: Holiday Inn & Suites
Location: 2225 Boundary Street
Beaufort, SC 29901
Mailing Address: P.O. Box 2146
Beaufort, SC 29901
County: Beaufort
Previous Orders: None
Permit/ID Number: 07-1113B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: HMV Hotels, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 17, 2018, and June 27, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The civil penalty has been paid.

- 13) Order Type and Number: Consent Order 18-168-RW
Order Date: September 7, 2018
Individual/Entity: **Forest Oaks Apartments (SC) Owner, LLC**
Facility: Forest Oaks Apartments
Location: 1878 Ginger Cake Circle
Rock Hill, SC 29732
Mailing Address: Same
County: York
Previous Orders: 17-128-RW (\$680.00)
Permit/ID Number: 46-159-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Forest Oaks Apartments (SC) Owner, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 13, 2018, and July 11, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a skimmer was missing a weir; the chlorine level was not within the acceptable range of water quality standards; only one "Shallow Water – No Diving Allowed" sign was posted; the cyanuric acid level was above the water quality standards acceptable limit; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, three hundred sixty dollars (**\$1,360.00**). The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 14) Order Type and Number: Consent Order 18-169-RW
Order Date: September 10, 2018
Individual/Entity: **Select Hotels, Inc.**
Facility: Country Inn & Suites
Location: 1739 Mandeville Road
Florence, SC 29501
Mailing Address: Same
County: Florence
Previous Orders: 16-029-RW (\$680.00)
Permit/ID Number: 21-130-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Select Hotels, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On July 16, 2018, and August 9, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing bumpers; a ladder step was broken; the pool floor was dirty; the pool furniture was not at least four feet from the edge of the pool; the bathroom did not have paper towels or soap; the drinking water fountain and foot rinse shower were not operating properly; a gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; the bound and numbered log book was not maintained on a daily basis; and the disinfection equipment was not operating properly.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, three hundred sixty dollars (**\$1,360.00**). The civil penalty has been paid.

15) Order Type and Number: Consent Order 18-170-RW
Order Date: September 10, 2018
Individual/Entity: **Townes at Brookwood Homeowners Association, Inc.**
Facility: Townes at Brookwood
Location: 33 Bay Springs Drive
Simpsonville, SC 29681
Mailing Address: P.O. Box 5539
Greenville, SC 29606
County: Greenville
Previous Orders: None
Permit/ID Number: 23-1201B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Townes at Brookwood Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 4, 2018, and July 19, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a gate did not self-close and latch; the bound and numbered log book was not maintained on a daily basis; the chlorine level was not within the acceptable range of water quality standards; and the pool rules sign was not completely filled out.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

16) Order Type and Number: Consent Order 18-171-RW
Order Date: September 17, 2018
Individual/Entity: **Upstate Southern Pines, LLC**
Facility: Southern Pines Apartments
Location: 350 Bryant Road
Spartanburg, SC 29303
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-076-1 & 42-077-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Upstate Southern Pines, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of two pools. On July 11, 2018, and August 8, 2018, the pools were inspected, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were not properly spaced; a ladder was missing a bumper; the drinking water fountain was not operating; the flow meter was missing; the chlorine level was not within the acceptable range of water quality standards; the pool rules sign was faded; the bound and numbered log book was not maintained on a daily basis; a bolt cover was in disrepair; and tiles were missing on the pool floor.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, three hundred sixty dollars (**\$1,360.00**). The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

17) Order Type and Number: Consent Order 18-172-RW
Order Date: September 17, 2018
Individual/Entity: **MBN Breakers, Inc.**
Facility: Breakers Central Tower
Location: 2000 North Ocean Boulevard
Myrtle Beach, SC 29577
Mailing Address: 7400 North Kings Highway
Myrtle Beach, SC 29572
County: Horry
Previous Orders: None
Permit/ID Number: 26-E80-1, 26-E84-1, and 26-E85-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: MBN Breakers, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool and two spas. On June 4, 2018, the pool and spas were inspected, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a skimmer was missing a weir; there was no drinking water fountain; the gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; the main drain grates were not visible; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, twenty dollars (**\$1,020.00**). The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

18) Order Type and Number: Consent Order 18-173-RW
Order Date: September 17, 2018
Individual/Entity: **MC Suite, Inc.**
Facility: Comfort Suites
Location: 1025 Jockey Court
Summerville, SC 29483
Mailing Address: Same
County: Berkeley
Previous Orders: 13-080-DW (\$400.00)
14-133-DW (\$1,600.00)
Permit/ID Number: 08-1002B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: MC Suite, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 11, 2018, and July 11, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a skimmer was missing a weir; a ladder was missing bumpers; the chlorine and pH levels were not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; the bound and numbered log book was not maintained on a daily basis; and the cyanuric acid levels were not recorded weekly.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount

of two thousand, seven hundred twenty dollars (**\$2,720.00**). The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 19) Order Type and Number: Consent Order 18-174-RW
Order Date: September 17, 2018
Individual/Entity: **Heartwood Place Homeowners Association**
Facility: Heartwood Place
Location: 300 Faye Court
Greer, SC 29650
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-206-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Heartwood Place Homeowners Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 26, 2018, and July 26, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine level was not within the acceptable range of water quality standards; and the pool rules sign was not completely filled out.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**). The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

- 20) Order Type and Number: Consent Order 18-175-RW
Order Date: September 18, 2018
Individual/Entity: **Arvisk, LLC**
Facility: Cottages at Landrum
Location: 293 Page Creek Boulevard
Landrum, SC 29356
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-1027B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Arvisk, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 21, 2018, and July 23, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there were chlorine sticks in the skimmer baskets; the drinking water fountain was not operating; the foot rinse shower was not operating; the chlorine level was not with the acceptable range of water quality standards; the facility address was not posted at the emergency notification device; a handrail was not tight and secure; and the emergency notification device was not operating properly. On July 26, 2018, a follow-up inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**). The civil penalty has been paid.

21) Order Type and Number: Consent Order 18-176-RW
Order Date: September 18, 2018
Individual/Entity: **Diamondrock Charleston Owner, LLC**
Facility: Renaissance Charleston
Location: 68 Wentworth Street
Charleston, SC 29401
Mailing Address: 2 Bethesda Metro Center, Suite 1400
Bethesda, MD 20814
County: Charleston
Previous Orders: None
Permit/ID Number: 10-1001B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Diamondrock Charleston Owner, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 23, 2018, and June 26, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; the bound and numbered log book was not maintained on a daily basis on the first inspection; and the bound and numbered log book was not available for review on the second inspection.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**). The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

22) Order Type and Number: Consent Order 18-177-RW
Order Date: September 18, 2018
Individual/Entity: **Landmark at Pine Court, LLC**
Facility: Landmark at Pine Court
Location: 3900 Bentley Drive
Columbia, SC 29210
Mailing Address: Same
County: Richland
Previous Orders: 15-018-RW (\$680.00)
Permit/ID Number: 40-288-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Landmark at Pine Court, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 12, 2018, and July 9, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing bumpers; the chlorine level was not within the acceptable range of water quality standards; the life ring did not have a permanently attached rope; the shepherd's crook was not permanently attached to the handle; the bound and numbered log book was not maintained on a daily basis; and the cyanuric acid level was above the water quality standards acceptable limit.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of one thousand, three hundred sixty dollars **(\$1,360.00)**.

23) Order Type and Number: Consent Order 18-178-RW
Order Date: September 18, 2018
Individual/Entity: **Meeting Street Realty Company, LLC**
Facility: Elan Midtown Apartments
Location: 441 Meeting Street
Charleston, SC 29403
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit/ID Number: 10-1222B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Meeting Street Realty Company, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 23, 2018, and June 26, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the drinking water fountain was not operating properly; the chlorine and pH levels were not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; the bound and numbered log book was not maintained on a daily basis; and the life ring was not United States Coast Guard approved.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

24) Order Type and Number: Consent Order 18-179-RW
Order Date: September 18, 2018
Individual/Entity: **TD Ripley Hotel SH, LLC**
Facility: Springhill Suites
Location: 98 Ripley Point Drive
Charleston, SC 29407
Mailing Address: 60 Pointe Circle
Greenville, SC 29615
County: Charleston
Previous Orders: 15-066-RW (\$340.00)
Permit/ID Number: 10-567-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: TD Ripley Hotel SH, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a spa. On June 19, 2018, and July 23, 2018, the spa was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the bound and numbered log book was not maintained on a daily basis. On August 10, 2018, a follow-up inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand, three hundred sixty dollars (**\$1,360.00**). The civil penalty has been paid.

25) Order Type and Number: Consent Order 18-180-RW
Order Date: September 19, 2018
Individual/Entity: **Palmetto Hospitality of Spartanburg, LLC**
Facility: AC Hotel
Location: 225 West Main Street
Spartanburg, SC 29306
Mailing Address: 100 Dunbar Street, Suite 402
Spartanburg, SC 29306
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-1106B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Palmetto Hospitality of Spartanburg, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 6, 2018, and July 13, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

26) Order Type and Number: Consent Order 18-181-RW
Order Date: September 19, 2018
Individual/Entity: **Carriage House Association**
Facility: Carriage House Condos
Location: 1468 Dover Road
Spartanburg, SC 29301
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-034-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Carriage House Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 7, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was not tight and secure; the water level was too low; all of the skimmers were missing weirs; the bathrooms did not have soap; the facility address was not posted at the emergency notification device; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of three hundred forty dollars (**\$340.00**). The civil penalty has been paid.

27) Order Type and Number: Consent Order 18-182-RW
Order Date: September 19, 2018
Individual/Entity: **Ashley Oaks H.O.A. and Swim Club, Inc.**
Facility: Ashley Oaks
Location: 7 Sourwood Court
Blythewood, SC 29016
Mailing Address: 219 Winding Oak Way
Blythewood, SC 29016
County: Richland
Previous Orders: None
Permit/ID Number: 40-1028B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Ashley Oaks H.O.A. and Swim Club, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 29, 2018, June 28, 2018, and August 6, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a handrail was not tight and secure; bolt covers were not secure; a ladder was missing bumpers; the pool floor was not clean; a skimmer was missing weirs; the pump room was not locked and had leaking pipes; chemicals were being stored in the pump room; the step edge stripe was not within one inch of the edge of the step; a light was out of its niche; the chlorine level was not within the acceptable range of water quality standards; the bound and numbered log book was not maintained a minimum of three times per week by the pool operator of record; the cyanuric acid levels were not recorded every week; and the bound and numbered log book was filled out in advance.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of two thousand, forty dollars (**\$2,040.00**).

28) Order Type and Number: Consent Order 18-183-RW
Order Date: September 19, 2018
Individual/Entity: **Waterway Landing Homeowner's Association II, Inc.**
Facility: Waterway Landing
Location: 201 Second Avenue Extension
North Myrtle Beach, SC 29582
Mailing Address: P.O. Box 769
North Myrtle Beach, SC 29597
County: Horry
Previous Orders: None
Permit/ID Number: 26-101-1 and 26-102-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Waterway Landing Homeowner's Association II, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool and a spa. On June 1, 2018, and June 20, 2018, the pool and spa were inspected, and violations were issued

for failure to properly operate and maintain; and on August 2, 2018, the spa was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing bumpers; a skimmer was missing a weir; there were no bathrooms; the chlorine level was not within the acceptable range of water quality standards; the pool rules sign was not completely filled out; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of two thousand, two hundred forty dollars **(\$2,240.00)**.

29) Order Type and Number: Consent Order 18-184-RW
Order Date: September 20, 2018
Individual/Entity: **Wexford Plantation Homeowners Association, Inc.**
Facility: Wexford Plantation
Location: 111 Wexford Club Drive
Hilton Head Island, SC 29928
Mailing Address: Same
County: Beaufort
Previous Orders: None
Permit/ID Number: 07-247-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Wexford Plantation Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 6, 2018, and July 9, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the cyanuric acid level was above the water quality standards acceptable limit.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

30) Order Type and Number: Consent Order 18-185-RW
Order Date: September 20, 2018
Individual/Entity: **Royal Park, LLC**
Facility: Country Club of South Carolina
Location: 3525 McDonald Boulevard
Florence, SC 29506
Mailing Address: 6727 Langley Ave
St. Louis, MO 62123
County: Florence
Previous Orders: None
Permit/ID Number: 21-069-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Royal Park, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 1, 2018 (first inspection), June 1, 2018 (second inspection), and July 26, 2018, the pool was inspected, and violations were issued for failure

to properly operate and maintain; and on the June 1, 2018 second inspection, the pool was inspected, and a violation was issued for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was no transition line; a ladder was missing bumpers; the pool furniture was not at least four feet from the edge of the pool; the bathroom did not have paper towels or soap; the chlorine level was not within the acceptable range of water quality standards; there was no shepherd's crook; the emergency notification device was not operational; and the pool was operating prior to receiving Department approval.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of two thousand, three hundred eighty dollars **(\$2,380.00)**.

31) Order Type and Number: Consent Order 18-186-RW
Order Date: September 20, 2018
Individual/Entity: **BLVD Group, LLC**
Facility: Sea Aire
Location: 403 24th Avenue
Myrtle Beach, SC 29577
Mailing Address: 3000 North Ocean Boulevard
Myrtle Beach, SC 29577
County: Horry
Previous Orders: None
Permit/ID Number: 26-171-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: BLVD Group, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 29, 2018, June 25, 2018, and August 2, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were not properly spaced; a skimmer was missing a weir; the drinking water fountain was not operating; the "no diving" tiles were not compliant; a bolt cover was missing; the pool deck was uneven and had sharp edges; the gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the life ring rope was too short; the shepherd's crook was not permanently attached to the pole; and the emergency notification device was not operating.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of two thousand, forty dollars **(\$2,040.00)**. The civil penalty has been paid.

32) Order Type and Number: Consent Order 18-187-RW
Order Date: September 20, 2018
Individual/Entity: **Palmetto Bluff Development, LLC**
Facility: Canoe Club
Location: 101 Myrtle View Street
Bluffton, SC 29910
Mailing Address: 476 Mount Pelia Road
Beaufort, SC 29910
County: Beaufort, SC 29910
Previous Orders: None
Permit/ID Number: 07-1133C

Violations Cited:

S.C. Code Ann. Regs. 61-51(J)

Summary: Palmetto Bluff Development, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 26, 2018, and July 23, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

33) Order Type and Number: Consent Order 18-188-RW
Order Date: September 24, 2018
Individual/Entity: **Gramling Brothers Real Estate and Development, Inc.**
Facility: Morgan Forest
Location: 351 Wilkins Road
Campobello, SC 29322
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-200-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Gramling Brothers Real Estate and Development, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a kiddie pool. On June 21, 2018, and July 23, 2018, the kiddie pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a skimmer was missing a weir; the chlorine level was not within the acceptable range of water quality standards; and the facility address was not posted at the emergency notification device.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

34) Order Type and Number: Consent Order 18-189-RW
Order Date: September 25, 2018
Individual/Entity: **Fund VI - Westbury Mews, LLC**
Facility: Westbury Mews
Location: 1425 Old Trolley Road
Summerville, SC 29485
Mailing Address: Same
County: Dorchester
Previous Orders: None
Permit/ID Number: 18-065-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Fund VI - Westbury Mews, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 1, 2018, and July 5, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine level was not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; and the gate did not self-close and latch.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

35) Order Type and Number: Consent Order 18-190-RW
Order Date: September 27, 2018
Individual/Entity: **Sea Marsh Tower II Homeowners Association, Inc.**
Facility: Sea Marsh II
Location: 6108 North Ocean Boulevard
North Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit/ID Number: 26-B15-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Sea Marsh Tower II Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 12, 2018, and July 5, 2018, the pool was inspected, and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the cyanuric acid level was above the water quality standards acceptable limit; the life ring did not have a permanently attached rope; the emergency notification device was not operational; the pool rules sign was not legible; only one "No Lifeguard On Duty - Swim At Your Own Risk" sign was posted; the current pool operator of record information was not posted to the public; the chlorine level was not within the acceptable range of water quality standards; and the 911 address did not match the facility address.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

Drinking Water Enforcement

36) Order Type and Number: Consent Order 18-027-DW
Order Date: September 4, 2018
Individual/Entity: **Grainger's, Inc.**
Facility: Longtown Corner Store and Windmill Restaurant
Location: 9145 Longtown Road
Ridgeway, SC 29130

Mailing Address: 1410 Horse Head Brand Road
Lugoff, SC 29078
County: Fairfield
Previous Orders: None
Permit/ID Number: 2070904
Violations Cited: S.C. Code Ann. Regs. 61-58.17.K(1)(b)

Summary: Grainger's, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On July 20, 2018, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS tested present for total coliform and E. coli, which resulted in a violation of the maximum contaminant level (MCL) for E. coli.

Action: The Individual/Entity is required to: submit a corrective action plan to include proposed steps to address the MCL violation; and pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

37) Order Type and Number: Consent Order 18-028-DW
Order Date: September 24, 2018
Individual/Entity: **Sand Mountain, LLC**
Facility: Sand Mountain Mobile Home Park
Location: 3547 Fish Hatchery Road
Gaston, SC 29053
Mailing Address: 128 Forty Love Point
Chapin, SC 29036
County: Lexington
Previous Orders: None
Permit/ID Number: 3260183
Violations Cited: S.C. Code Ann. Regs. 61-58.17.F(2)

Summary: Sand Mountain, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On August 8, 2018, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: failed to monitor for total coliforms during the months of February and May 2018.

Action: The Individual/Entity is required to: submit a standard operating procedure to ensure that all monitoring and reporting requirements are complied with per State Primary Drinking Water Regulation 61-58; pay a civil penalty in the amount of two thousand dollars (**\$2,000.00**); and pay a stipulated penalty in the amount of two thousand dollars (\$2,000.00) should any requirement of the Order not be met. The civil penalty has been paid. The Individual/Entity submitted the standard operating procedure which was approved by the Department.

Water Pollution Enforcement

38) Order Type and Number: Consent Order 18-035-W
Order Date: September 4, 2018
Individual/Entity: **City of Abbeville**
Facility: Water Treatment Plant

Location: 406 Vienna Street
Abbeville County, SC
Mailing Address: P.O. Box 639
Abbeville, SC 29620
County: Abbeville
Previous Orders: None
Permit/ID Number: SCG646044
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110
(d) (2008 & Supp. 2017); Water Pollution Control Permits, 3 S.C. Code Ann Regs. 61-
9.122.41 (a) and (d) (2011).

Summary: The City of Abbeville (Individual/Entity) owns and is responsible for the proper operation and maintenance of a water treatment plant (WTP) located in Abbeville County, South Carolina. On April 7, 2017, a Notice of Violation was issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for acute effluent toxicity (Acute Toxicity).

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) to address the deficiencies; perform accelerated Acute Toxicity testing if it experiences a test failure immediately following completion of the CAP; submit quarterly progress reports in the event that accelerated testing becomes necessary; and, pay a civil penalty in the amount of two thousand, eight hundred dollars **(\$2,800.00)**.

39) Order Type and Number: Consent Order 18-036-W
Order Date: September 10, 2018
Individual/Entity: **Milliken & Company**
Facility: Enterprise Plant WWTF
Location: Highway 288
Marietta, SC
Mailing Address: P.O. Box 1926 M-482
Spartanburg, SC 29304
County: Greenville
Previous Orders: None
Permit/ID Number: SC0003191
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110
(d) (2008 & Supp. 2017); Water Pollution Control Permits, 3 S.C. Code Ann Regs. 61-
9.122.41 (a) and (d) (2011).

Summary: Milliken & Company (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Greenville County, South Carolina. On January 18, 2018, and April 18, 2018, Notices of Violation were issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for Biochemical Oxygen Demand (BOD) and antimony.

Action: The Individual/Entity is required to: submit a corrective action plan to address the deficiencies; submit compliance progress reports every ninety (90) days; and, pay a civil penalty in the amount of three thousand, four hundred dollars **(\$3,400.00)**.

40) Order Type and Number: Consent Order 18-037-W
Order Date: September 24, 2018
Individual/Entity: **Bamberg Board of Public Works**
Facility: Bamberg WWTF
Location: 277 Mt. Carmel Cemetery Road
Bamberg SC
Mailing Address: P.O. Box 300
Bamberg, SC 29003
County: Bamberg
Previous Orders: None
Permit/ID Number: ND0063398
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110
(d) (Supp. 2008 and 2017); Water Pollution Control Permits, 3 S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: Bamberg Board of Public Works (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Bamberg County, South Carolina. On October 4, 2017, a Notice of Violation was issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for Fecal Coliform.

Action: The Individual/Entity is required to: submit a corrective action plan to address the deficiencies; and, pay a civil penalty in the amount of two thousand, four hundred dollars **(\$2,400.00)**.

41) Order Type and Number: Consent Order 18-038-W
Order Date: September 25, 2018
Individual/Entity: **Town of Lynchburg**
Facility: Town of Lynchburg WWTF
Location: Off US Highway 76 in Lee County, about 2 miles
Northeast of Lynchburg
Mailing Address: P.O. Box 147
Lynchburg, SC 29080
County: Lee
Previous Orders: None
Permit/ID Number: SC0042676
Violations Cited: S.C. Code Ann. § 48-1-110(d) (Supp. 2016); and
24 S.C. Code Ann. Regs. 61-9.122.41(a) (2016).

Summary: Town of Lynchburg (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Lee County, South Carolina. On September 29, 2017, and November 8, 2018, Notices of Violation were issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for *Escherichia coli* (E. coli) and Biochemical Oxygen Demand Percent Removal (BOD % Removal).

Action: The Individual/Entity is required to: submit a corrective action plan to address the deficiencies; and, pay a civil penalty in the amount of four thousand, four hundred eighty dollars (**\$4,480.00**) in four (4) equal installment payments.

42) Order Type and Number: Consent Order 18-039-W
Order Date: September 25, 2018
Individual/Entity: **Berkeley County School District**
Facility: Cross Elementary School WWTF
Location: 1325 Ranger Drive
Cross, SC 29436
Mailing Address: Same
County: Berkeley
Previous Orders: None
Permit/ID Number: SC0034479
Violations Cited: S.C. Code Ann. § 48-1-110(d) (Supp. 2016); and
24 S.C. Code Ann. Regs. 61-9.122.41(a) (2011).

Summary: Berkeley County School District (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Berkeley County, South Carolina. On August 17, 2017, and May 23, 2018, Notices of Violation were issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for Total Copper (TC).

Action: The Individual/Entity is required to: submit a corrective action plan to address the deficiencies; and, pay a civil penalty in the amount of one thousand, six hundred dollars (**\$1,600.00**).

BUREAU OF AIR QUALITY

43) Order Type and Number: Consent Order 18-038-A
Order Date: September 10, 2018
Individual/Entity: **Mr. Frank McClary**
Facility: Commercial Property
Location: 109 West Main Street
Andrews, SC 29510
Mailing Address: 109 North Farr Avenue
Andrews, SC 29510
County: Georgetown
Previous Orders: None
Permit/ID Number: U1611315
Violations Cited: EPA 40 CFR 61 Subpart M and 7 S.C. Code Ann.
Regs. 61-86.1

Summary: Mr. Frank McClary (Individual/Entity), owns the property located at 109 West Main Street, Andrews, South Carolina (Site). On May 16, 2016, the Department conducted an investigation at the Site in response to a complaint of demolition activity. The Individual/Entity has violated South Carolina Air Pollution Regulations as follows: failed to

ensure that a building inspection was performed prior to the start of demolition; failed to submit a written notice of intent to demolish to the Department; failed to ensure that the required work practice requirements were adhered to; failed to obtain a Department-issued asbestos project license; and, failed to ensure that each worker met the applicable training and licensing requirements at the Site.

Action: The Individual/Entity is required to: henceforth comply with all requirements of EPA 40 CFR 61 Subpart M and 7 S.C. Code Ann. Regs. 61-86.1; and, pay a civil penalty in the amount of seven thousand, five hundred dollars **(\$7,500.00)**.

44) Order Type and Number: Consent Order 18-039-A
Order Date: September 19, 2018
Individual/Entity: **JW Aluminum Company**
Facility: JW Aluminum Company
435 Old Mount Holly Road
Location: Goose Creek SC 29445
Mailing Address: Same
County: Berkeley
Previous Orders: None
Permit/ID Number: 0420-0033
Violations Cited: U.S. Environmental Protection Agency ("EPA") regulations at 40 CFR Part 63, and 5 South Carolina Code Ann. Regs. 61-62.63, National Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (collectively, "Subpart RRR"); 5 S.C. Code Ann. Regs. 61-62.5 (Supp. 2017), Air Pollution Control Standards, Standard No. 4, Emissions from Process Industries ("Standard 4"); and, 5 S.C. Code Ann. Regs. 61-62.1 (Supp. 2017), Section II, Permit Requirements

Summary: JW Aluminum Company (Individual/Entity), located in Goose Creek, South Carolina, manufactures aluminum coil. The Individual/Entity exceeded its emission limit for HCl during a Department-approved source test conducted on February 2, 2016, through February 4, 2016. The Individual/Entity demonstrated compliance with the emission limit during a Department-approved re-test conducted on June 1, 2016, through June 3, 2016. A Department inspector performed a visual observation at the facility on June 7, 2016, and observed an exceedance of its opacity limit. Lastly, the Individual/Entity disclosed that it did not record fan amperage readings, pressure drop readings, and liquid flow reading each shift during source operation on several dates in April, May, and June of 2016, in a semi-annual report received by the Department on October 31, 2016. The Individual/Entity has violated the regulations as follows: failed to limit HCl emissions to a maximum of 0.40 lb/ton of charge; failed to limit opacity to 20%; failed to record fan amperage readings, pressure drop readings, and liquid flow readings each shift during source operation on several dates in April, May, and June 2016.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of seven thousand dollars **(\$7,000.00)**.

45) Order Type and Number: Consent Order 18-041-A
Order Date: September 24, 2018
Individual/Entity: **Giant Cement Company**
Facility: Giant Cement Company

Location: 654 Judge Street
Harleyville, SC 29448
Mailing Address: P.O. Box 218
Harleyville, SC 29448
County: Dorchester
Previous Orders: 17-033-A (\$10,000.00)
Permit/ID Number: 0900-0002
Violations Cited: U.S. EPA 40 CFR 63, 5 S.C. Code Ann.
Regs. 61-62.63, Subpart EEE, and 5 S.C. Code Ann. Regs. 61-62.1, Section II,
Permit Requirements

Summary: Giant Cement Company (Individual/Entity), is a Portland cement manufacturing plant. The Individual/Entity submitted a semiannual report that indicated it exceeded its established temperature for the baghouse and THC concentrations during its semiannual reporting period. The Individual/Entity violated South Carolina Air Pollution Control Regulations as follows: failed to comply with established temperature operating limit and established THC concentration operating limit.

Action: The Individual/Entity is required to: comply with Subpart EEE, including established temperature, and THC concentration operating limits; and pay to the Department a civil penalty in the amount of ten thousand dollars **(\$10,000.00)**.

46) Order Type and Number: Consent Order 18-040-A
Order Date: September 27, 2018
Individual/Entity: **Leigh Fibers, Inc.**
Facility: Leigh Fibers, Inc.
Location: 1101 Syphrit Road
Wellford, SC 29385
Mailing Address: Same
County: Spartanburg
Previous Orders: N/A
Permit/ID Number: 2060-0084
Violations Cited: 5 S.C. Code Ann. Regs. 61-62.1, Section II, *Permit Requirements*

Summary: Leigh Fibers, Inc. (Individual/Entity), located in Wellford, South Carolina, operates a textile processing facility. On December 12, 2017, the Department conducted a comprehensive inspection. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: failed to take and/or document corrective action when control devices operated outside of established operational ranges; failed to obtain a construction permit or permission from the Department prior to altering two control devices; failed to submit an updated operational range for RDF-08 to the Department for review and approval; failed to conduct year-end reviews for changes to permitted processes; and failed to record daily pressure drop readings for each baghouse.

Action: The Individual/Entity is required to: henceforth obtain permission and/or the appropriate Department-issued permits prior to altering the process, including any control device; henceforth maintain established operational ranges for each applicable control device and update those ranges according to the requirements of the General Permit; henceforth record daily pressure drop readings for each baghouse during source operation, and maintain records of baghouse pressure drop readings, including corrective actions taken, on site in written or electronic logs for a period of at least five (5) years from the date generated;

henceforth keep an OSIL with the General Permit and conduct year-end reviews of the permit; and pay a civil penalty in the amount of ten thousand dollars **(\$8,000.00)**.

- 47) Order Type and Number: Consent Order 18-042-A
Order Date: September 28, 2018
Individual/Entity: **WeylChem US Inc.**
Facility: WeylChem US Inc.
Location: 2114 Larry Jeffers Road
Elgin, SC 29045
Mailing Address: Same
County: Kershaw
Previous Orders: 15-046-A (\$9,000.00)
18-017-A
Permit/ID Number: 1380-0017
Violations Cited: U.S. EPA 40 CFR 63 and 5 S.C. Code Ann.
Regs. 61-62.63, Subparts GGG, MMM, and FFFF; and 5 S.C. Code Ann. Regs.
61-62.1, Section II

Summary: WeylChem US Inc. (Individual/Entity), located in Elgin, South Carolina, produces specialty chemicals such as general organic chemicals, specialty organic chemicals, pharmaceutical intermediates, flavor enhancers, herbicides, and pesticides. The Department conducted a review of semiannual and quarterly reports from the Individual/Entity. During the review, the Department determined the Individual/Entity exceeded the established operating temperature parameter for regenerative thermal oxidizer (RTO). The Individual/Entity violated South Carolina Air Pollution Control Regulations as follows: failed to demonstrate compliance with the established minimum daily average temperature for its RTO.

Action: The Individual/Entity is required to: comply with applicable NESHAP regulations and its Title V Permit by maintaining the established minimum daily average operating temperature for its RTO; and pay to the Department a civil penalty in the amount of twelve thousand, nine hundred and sixty dollars **(\$8,330.00)**.

BUREAU OF ENVIRONMENTAL HEALTH SERVICES

Food Safety Enforcement

- 48) Order Type and Number: Consent Order 2018-206-01-028
Order Date: September 4, 2018
Individual/Entity: **Vaqueros Mexican Restaurant**
Facility: Vaqueros Mexican Restaurant
Location: 133 East Queen Street
Pendleton, SC 29670
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit Number: 04-206-03745
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Vaqueros Mexican Restaurant (Individual/Entity), located in Pendleton, South Carolina, is a restaurant. The Department conducted inspections on July 25, 2017, July 26, 2017, and June 21, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods and failed to provide equipment sufficient in number and capacity to maintain food temperatures for cooling and heating food and holding cold and hot food.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

49) Order Type and Number: Consent Order 2018-206-01-029
Order Date: September 4, 2018
Individual/Entity: **Redwood Cafeteria**
Facility: Redwood Cafeteria
Location: 2404 Belton Highway
Anderson, SC 29621
Mailing Address: 687 JT Ashley Road
Honea Path, SC 29654
County: Anderson
Previous Orders: None
Permit Number: 04-206-03462
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Redwood Cafeteria (Individual/Entity), located in Anderson, South Carolina, is a restaurant. The Department conducted inspections on August 19, 2016, August 17, 2017, and June 29, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of five hundred fifty dollars **(\$550.00)**.

50) Order Type and Number: Consent Order 2018-206-02-045
Order Date: September 4, 2018
Individual/Entity: **Cazbah**
Facility: Cazbah
Location: 16 West McBee Avenue
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit Number: 23-206-07178
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cazbah (Individual/Entity), located in Greenville, South Carolina, is a restaurant. The Department conducted inspections on January 13, 2017, September 20, 2017, and June 26, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature

control is used as a public health control, the food in unmarked containers or packages shall be discarded.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

51) Order Type and Number: Consent Order 2018-206-03-056
Order Date: September 4, 2018
Individual/Entity: **Cozy Corner Deli**
Facility: Cozy Corner Deli
Location: 3674 Highway 51 North, Suite 102
Fort Mill, SC 29715
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-03027
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cozy Corner Deli (Individual/Entity), located in Fort Mill, South Carolina is a restaurant. The Department conducted inspections on May 20, 2017, May 19, 2018, and May 25, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

52) Order Type and Number: Consent Order 2018-206-03-063
Order Date: September 4, 2018
Individual/Entity: **Southern Grill 321**
Facility: Southern Grill 321
Location: 300 Sharon Road
York, SC 29745
Mailing Address: Same
County: York
Previous Orders: 2017-206-03-104 (\$2,400.00)
Permit Number: 46-206-03175
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Southern Grill 321 (Individual/Entity), located in York, South Carolina, is a restaurant. The Department conducted an inspection on May 24, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly cool cooked time/temperature control for safety foods and failed to use effective methods to cool cooked time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand dollars **(\$1,000.00)**.

53) Order Type and Number: Consent Order 2018-206-03-064
Order Date: September 4, 2018
Individual/Entity: **Waffle House #446**
Facility: Waffle House #446
Location: 2846 Charleston Highway
West Columbia, SC 29169
Mailing Address: P.O. Box 6450
Norcross, GA 30091
County: Lexington
Previous Orders: 2017-206-03-084 (\$800.00)
Permit Number: 32-206-00102
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Waffle House #446 (Individual/Entity), located in West Columbia, South Carolina, is a restaurant. The Department conducted an inspection on May 21, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand dollars **(\$1,000.00)**.

54) Order Type and Number: Consent Order 2018-206-03-075
Order Date: September 4, 2018
Individual/Entity: **Millstone Pizza & Taphouse LLC**
Facility: Millstone Pizza & Taphouse LLC
Location: 121 Caldwell Street, Suite 102
Rock Hill, SC 29730
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-03051
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Millstone Pizza & Taphouse LLC (Individual/Entity), located in Rock Hill, South Carolina, is a restaurant. The Department conducted inspections on June 5, 2017, June 15, 2017, and May 22, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of six hundred fifty dollars **(\$650.00)**.

55) Order Type and Number: Consent Order 2018-206-03-086
Order Date: September 4, 2018
Individual/Entity: **Jersey Mike's Subs**
Facility: Jersey Mike's Subs
Location: 725 Cherry Road, Suite 176
Rock Hill, SC 29732

Mailing Address: Same
County: York
Previous Orders: 2017-206-03-079 (\$800.00)
Permit Number: 46-206-03275
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Jersey Mike's Subs (Individual/Entity), located in Rock Hill, South Carolina, is a restaurant. The Department conducted an inspection on May 30, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand dollars **(\$1,000.00)**.

56) Order Type and Number: Consent Order 2018-206-03-088
Order Date: September 4, 2018
Individual/Entity: **Hudson's Smokehouse BBQ**
Facility: Hudson's Smokehouse BBQ
Location: 4952 Sunset Boulevard
Lexington, SC 29072
Mailing Address: Same
County: Lexington
Previous Orders: 2014-206-03-111 (\$500.00)
Permit Number: 32-206-03120
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hudson's Smokehouse BBQ (Individual/Entity), located in Lexington, South Carolina, is a restaurant. The Department conducted inspections on June 7, 2016, August 30, 2016, September 9, 2016, July 6, 2017, July 14, 2017, September 20, 2017, January 24, 2018, June 8, 2018, and June 12, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods, failed to ensure that the retail food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall implement a HACCP plan, failed to maintain the premises free of insects, rodents, and other pests, and failed to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat, time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four thousand dollars **(\$4,000.00)**.

57) Order Type and Number: Consent Order 2018-206-03-092
Order Date: September 4, 2018
Individual/Entity: **Buffalo Creek Bar & Grill**
Facility: Buffalo Creek Bar & Grill
Location: 750 Marina Way

Prosperity, SC 29127
Mailing Address: Same
County: Newberry
Previous Orders: None
Permit Number: 36-206-01301
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Buffalo Creek Bar & Grill (Individual/Entity), located in Prosperity, South Carolina, is a restaurant. The Department conducted inspections on June 30, 2017, July 7, 2017, June 8, 2018, and June 14, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

58) Order Type and Number: Consent Order 2018-206-03-097
Order Date: September 4, 2018
Individual/Entity: **Cajun Yard Dog**
Facility: Cajun Yard Dog
Location: 900 Crossroads Plaza
Fort Mill, SC 29708
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-04071
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cajun Yard Dog (Individual/Entity), located in Fort Mill, South Carolina, is a restaurant. The Department conducted inspections on October 10, 2017, June 29, 2018, and July 6, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of five hundred fifty dollars **(\$550.00)**.

59) Order Type and Number: Consent Order 2018-206-03-103
Order Date: September 4, 2018
Individual/Entity: **Wendy's #40**
Facility: Wendy's #40
Location: 270 Carowinds Boulevard
Fort Mill, SC 29708
Mailing Address: 8040 Arrowridge Boulevard
Charlotte, NC 28273
County: York
Previous Orders: None
Permit Number: 46-206-01172
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wendy's #40 (Individual/Entity), located in Fort Mill, South Carolina, is a restaurant. The Department conducted inspections on September 21, 2016, September 20, 2017, and July 17, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

60) Order Type and Number: Consent Order 2018-206-03-104
Order Date: September 4, 2018
Individual/Entity: **Red Robin**
Facility: Red Robin
Location: 100 Columbiana Circle, Suite 1024
Columbia, SC 29212
Mailing Address: 6312 South Fiddlers Green #200N
Greenwood Village, CO 80111
County: Lexington
Previous Orders: None
Permit Number: 32-206-06391
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Red Robin (Individual/Entity), located in Columbia, South Carolina, is a restaurant. The Department conducted inspections on April 16, 2018, June 26, 2018, July 6, 2018, and July 16, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand, six hundred dollars **(\$1,600.00)**.

61) Order Type and Number: Consent Order 2018-206-03-107
Order Date: September 4, 2018
Individual/Entity: **CNM Convenience Store**
Facility: CNM Convenience Store
Location: 4060 Peachtree Street
Hickory Grove, SC 29717
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-03302
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: CNM Convenience Store (Individual/Entity), located in Hickory Grove, South Carolina, is a convenience store. The Department conducted inspections on April 18, 2017, September 20, 2017, and July 18, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time

without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

62) Order Type and Number: Consent Order 2018-206-03-108
Order Date: September 4, 2018
Individual/Entity: **Firehouse Subs**
Facility: Firehouse Subs
Location: 7467 Saint Andrews Road
Irmo, SC 29063
Mailing Address: P.O. Box 50645
Columbia, SC 29250
County: Lexington
Previous Orders: None
Permit Number: 32-206-06513
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Firehouse Subs (Individual/Entity), located in Irmo, South Carolina, is a restaurant. The Department conducted inspections on September 25, 2017, October 3, 2017, July 10, 2018, and July 18, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand, four hundred seventy-five dollars **(\$1,475.00)**.

63) Order Type and Number: Consent Order 2018-206-03-110
Order Date: September 4, 2018
Individual/Entity: **Food Lion #232 Deli**
Facility: Food Lion #232 Deli
Location: 1260 East Main Street
Rock Hill, SC 29730
Mailing Address: P.O. Box 1330
Salisbury, NC 28145
County: York
Previous Orders: None
Permit Number: 46-206-01101
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Food Lion #232 Deli (Individual/Entity), located in Rock Hill, South Carolina, is a deli. The Department conducted inspections on September 7, 2016, September 15, 2016, September 5, 2017, and July 17, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand, six hundred dollars **(\$1,600.00)**.

64) Order Type and Number: Consent Order 2018-206-03-116
Order Date: September 4, 2018
Individual/Entity: **Charanda of Newport**
Facility: Charanda of Newport
Location: 4811 Old York Road
Rock Hill, SC 29732
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-02830
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Charanda of Newport (Individual/Entity), located in Rock Hill, South Carolina, is a restaurant. The Department conducted inspections on August 19, 2016, August 18, 2017, and July 9, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure there was no bare hand contact with ready-to-eat foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

65) Order Type and Number: Consent Order 2018-206-05-008
Order Date: September 4, 2018
Individual/Entity: **Restaurant at the Wilcox**
Facility: Restaurant at the Wilcox
Location: 100 Colleton Avenue Southwest
Aiken, SC 29801
Mailing Address: Same
County: Aiken
Previous Orders: None
Permit Number: 02-206-02556
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Restaurant at the Wilcox (Individual/Entity), located in Aiken, South Carolina, is a restaurant. The Department conducted inspections on June 30, 2017, February 15, 2018, July 12, 2018, and July 19, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand, six hundred dollars **(\$1,600.00)**.

66) Order Type and Number: Consent Order 2018-206-06-088
Order Date: September 4, 2018
Individual/Entity: **Harborside Seafood & Italian**
Facility: Harborside Seafood & Italian
Location: 815 Front Street
Georgetown, SC 29440
Mailing Address: Same
County: Georgetown
Previous Orders: None
Permit Number: 22-206-06382
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Harborside Seafood & Italian (Individual/Entity), located in Georgetown, South Carolina, is a restaurant. The Department conducted inspections on June 21, 2017, February 7, 2018, February 15, 2018, June 18, 2018, June 19, 2018, June 29, 2018, and August 8, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; failed to use effective methods to cool cooked time/temperature control for safety foods; failed to properly cool cooked time/temperature control for safety foods; failed to maintain the premises free of insects, rodents, and other pests; failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor; failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue and other debris; failed to clean the physical facilities as often as necessary to keep them clean; failed to properly thaw time/temperature control for safety foods; and failed to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat, time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of three thousand, five hundred dollars (**\$3,500.00**).

67) Order Type and Number: Consent Order 2018-206-06-089
Order Date: September 4, 2018
Individual/Entity: **Dragon Pan**
Facility: Dragon Pan
Location: 201 Fresh Drive, Suite B
Myrtle Beach, SC 29579
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12805
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Dragon Pan (Individual/Entity), located in Myrtle Beach, South Carolina, is a restaurant. The Department conducted inspections on February 13, 2017, October 10, 2017, and July 11, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat,

time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four hundred dollars **(\$400.00)**.

68) Order Type and Number: Consent Order 2018-206-06-091
Order Date: September 4, 2018
Individual/Entity: **Sarku Hibachi Buffet**
Facility: Sarku Hibachi Buffet
Location: 901 Highway 17 North
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-13670
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sarku Hibachi Buffet (Individual/Entity), located in Surfside Beach, South Carolina, is a restaurant. The Department conducted inspections on May 3, 2018, May 4, 2018, and July 3, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that equipment and utensils were designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four hundred dollars **(\$400.00)**.

69) Order Type and Number: Consent Order 2018-206-07-052
Order Date: September 4, 2018
Individual/Entity: **Quick Food Mart 2**
Facility: Quick Food Mart 2
Location: 2703 Highway 17-A South
Summerville, SC 29483
Mailing Address: Same
County: Dorchester
Previous Orders: None
Permit Number: 18-206-09326
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Quick Food Mart 2 (Individual/Entity), located in Summerville, South Carolina, is a convenience store. The Department conducted inspections on August 11, 2017, July 13, 2018, and July 24, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded and failed to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat,

time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

70) Order Type and Number: Consent Order 2018-206-08-010
Order Date: September 4, 2018
Individual/Entity: **Huddle House**
Facility: Huddle House
Location: 801 Elm Street
Hampton, SC 29924
Mailing Address: 2265 Armstrong Court
Conyers, GA 30094
County: Hampton
Previous Orders: None
Permit Number: 25-206-01219
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Huddle House (Individual/Entity), located in Hampton, South Carolina, is a restaurant. The Department conducted inspections on November 14, 2016, September 22, 2017, and July 20, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

71) Order Type and Number: Consent Order 2018-206-06-067
Order Date: September 6, 2018
Individual/Entity: **Sole Italian Restaurant**
Facility: Sole Italian Restaurant
Location: 3401 A-B North Kings Highway
Myrtle Beach, SC 2977
Mailing Address: 8236 Forest Lake Drive
Conway, SC 29526
County: Horry
Previous Orders: None
Permit Number: 26-206-12832
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sole Italian Restaurant (Individual/Entity), located in Myrtle Beach, South Carolina, is a restaurant. The Department conducted inspections on August 11, 2017, June 7, 2018, and June 14, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

72) Order Type and Number: Consent Order 2018-206-06-087
Order Date: September 6, 2018
Individual/Entity: **Nacho Hippo**
Facility: Nacho Hippo
Location: 850 North Beach Boulevard
North Myrtle Beach, SC 29582
Mailing Address: 2504 S Kings Highway
Myrtle Beach, SC 295770
County: Horry
Previous Orders: None
Permit Number: 26-206-12984
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Nacho Hippo (Individual/Entity), located in North Myrtle Beach, South Carolina, is a restaurant. The Department conducted inspections on June 25, 2018, July 5, 2018, and July 11, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

73) Order Type and Number: Consent Order 2018-206-07-030
Order Date: September 6, 2018
Individual/Entity: **Boxcar Betty's**
Facility: Boxcar Betty's
Location: 1922 Savannah Highway
Charleston, SC 29407
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-09115
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Boxcar Betty's (Individual/Entity), located in Charleston, South Carolina, is a restaurant. The Department conducted inspections on February 2, 2017, February 3, 2017, June 29, 2017, May 29, 2018, and June 6, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of two thousand, four hundred dollars **(\$2,400.00)**.

74) Order Type and Number: Consent Order 2018-206-07-048
Order Date: September 6, 2018
Individual/Entity: **Senor Tequila**
Facility: Senor Tequila
Location: 612 Coleman Boulevard
Mt. Pleasant, SC 29464
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-05229
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Senor Tequila (Individual/Entity), located in Mount Pleasant, South Carolina, is a restaurant. The Department conducted inspections on July 26, 2017, July 25, 2018, and July 26, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods and failed to provide equipment sufficient in number and capacity to maintain food temperatures for cooling and heating food and holding cold and hot food.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

75) Order Type and Number: Consent Order 2018-206-02-044
Order Date: September 17, 2018
Individual/Entity: **Nose Dive**
Facility: Nose Dive
Location: 116 South Main Street
Greenville, SC 29601
Mailing Address: 207 South Main Street
Greenville, SC 29601
County: Greenville
Previous Orders: None
Permit Number: 23-206-10176
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Nose Dive (Individual/Entity), located in Greenville, South Carolina, is a restaurant. The Department conducted inspections on September 18, 2017, September 20, 2017, and June 19, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

76) Order Type and Number: Consent Order 2018-206-02-046
Order Date: September 17, 2018
Individual/Entity: **Larkin's on the River**
Facility: Larkin's on the River

Location: 318 South Main Street
Greenville, SC 29601
Mailing Address: 156 Water's Edge Court
Lake Lure, NC 28746
County: Greenville
Previous Orders: 2015-206-02-039 (\$1,200.00)
Permit Number: 23-206-08759
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Larkin's on the River (Individual/Entity), located in Greenville, South Carolina, is a restaurant. The Department conducted inspections on January 24, 2017, October 16, 2017, and July 26, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

77) Order Type and Number: Consent Order 2018-206-02-047
Order Date: September 17, 2018
Individual/Entity: **Cantinflas Mexican Restaurant**
Facility: Cantinflas Mexican Restaurant
Location: 10 South Main Street
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2016-206-02-030 (\$400.00)
Permit Number: 23-206-07370
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cantinflas Mexican Restaurant (Individual/Entity), located in Greenville, South Carolina, is a restaurant. The Department conducted inspections on October 2, 2017, July 12, 2018, and July 17, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand dollars **(\$1,000.00)**.

78) Order Type and Number: Consent Order 2018-206-03-101
Order Date: September 17, 2018
Individual/Entity: **Sun Ming Chinese Restaurant**
Facility: Sun Ming Chinese Restaurant
Location: 7509 St. Andrews Road
Irmo, SC 29063
Mailing Address: Same
County: Lexington
Previous Orders: 2017-206-03-096 (\$800.00)

Permit Number: 32-206-03110
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sun Ming Chinese Restaurant (Individual/Entity), located in Irmo, South Carolina, is a restaurant. The Department conducted an inspection on July 23, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand dollars **(\$1,000.00)**.

79) Order Type and Number: Consent Order 2018-206-03-106
Order Date: September 17, 2018
Individual/Entity: **Angelo's Zesto**
Facility: Angelo's Zesto
Location: 4001 North Main Street
Columbia, SC 29201
Mailing Address: Same
County: Richland
Previous Orders: None
Permit Number: 40-206-02612
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Angelo's Zesto (Individual/Entity), located in Columbia, South Carolina, is a restaurant. The Department conducted inspections on June 8, 2017, August 2, 2017, August 8, 2017, August 18, 2017, September 1, 2017, September 13, 2017, September 21, 2017, October 2, 2017, May 9, 2018, and July 5, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue and other debris and failed to ensure that equipment is maintained in a state of repair and condition that meets the regulation requirements.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of one thousand, six hundred dollars **(\$1,600.00)**.

80) Order Type and Number: Consent Order 2018-206-06-057
Order Date: September 17, 2018
Individual/Entity: **Ichiro's Express**
Facility: Ichiro's Express
Location: 442 North Main Street
Hemingway, SC 29554
Mailing Address: 3456 Forestbrook Road
Myrtle Beach, SC 29588
County: Williamsburg
Previous Orders: None
Permit Number: 45-206-00436
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Ichiro's Express (Individual/Entity), located in Hemingway, South Carolina, is a restaurant. The Department conducted inspections on February 7, 2018, March 30, 2018, and May 29, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four hundred dollars **(\$400.00)**.

81) Order Type and Number: Consent Order 2018-206-06-074
Order Date: September 17, 2018
Individual/Entity: **Buzz's Roost**
Facility: Buzz's Roost
Location: 917 B Front Street
Georgetown, SC 29440
Mailing Address: Same
County: Georgetown
Previous Orders: 2016-206-06-137 (\$800.00)
Permit Number: 22-206-06265
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Buzz's Roost (Individual/Entity), located in Georgetown, South Carolina, is a restaurant. The Department conducted inspections on March 21, 2017, January 22, 2018, February 1, 2018, February 2, 2018, April 3, 2018, and June 19, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; failed to keep shellstock tags or labels attached to the container in which the shellstock are received until the container is empty; failed to clean non-food contact surfaces at a frequency to preclude accumulation of soil residues; failed to maintain the physical facilities in good repair; and failed to clean the physical facilities as often as necessary to keep them clean.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of two thousand, six hundred dollars **(\$2,600.00)**.

82) Order Type and Number: Consent Order 2018-206-06-083
Order Date: September 17, 2018
Individual/Entity: **Uncle Tito's**
Facility: Uncle Tito's
Location: 4124 Highway Business 17 South, Unit C
Murrells Inlet, SC 29576
Mailing Address: 130 Gray Moss Road
Murrells Inlet, SC 29576
County: Georgetown
Previous Orders: None
Permit Number: 22-206-06065
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Uncle Tito's (Individual/Entity), located in Murrells Inlet, South Carolina, is a restaurant. The Department conducted inspections on December 13, 2016, September

26, 2017, and July 5, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat, time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four hundred dollars **(\$400.00)**.

83) Order Type and Number: Consent Order 2018-206-06-085
Order Date: September 17, 2018
Individual/Entity: **Moose Lodge #2351**
Facility: Moose Lodge #2351
Location: 9763 Moose Road
Murrells Inlet, SC 29576
Mailing Address: P.O. Box 14947
Surfside Beach, SC 29587
County: Horry
Previous Orders: 2018-206-06-062 (\$400.00)
Permit Number: 26-206-07212
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Moose Lodge #2351 (Individual/Entity), located in Murrells Inlet, South Carolina, operates a restaurant. The Department conducted inspections on October 10, 2017, May 1, 2018, and July 9, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that, if hot held, cooked time/temperature control for safety foods that have been cooled are reheated to a temperature of at least 165°F (74°C) for fifteen seconds.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

84) Order Type and Number: Consent Order 2018-206-07-050
Order Date: September 17, 2018
Individual/Entity: **The Cottages on Charleston Highway**
Facility: The Cottages on Charleston Highway
Location: 16 Patriots Point Road
Mt. Pleasant, SC 29464
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-05917
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: The Cottages on Charleston Highway (Individual/Entity), located in Mount Pleasant, South Carolina, is a restaurant. The Department conducted inspections on April 18, 2017, April 16, 2018, May 24, 2018, June 25, 2018, and June 27, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to

ensure that a person in charge, is certified by a food protection manager certification program that is recognized by the Conference for Food Protection.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of six hundred dollars **(\$600.00)**.

85) Order Type and Number: Consent Order 2018-206-03-076
Order Date: September 18, 2018
Individual/Entity: **Umi Japanese Restaurant**
Facility: Umi Japanese Restaurant
Location: 510 B C Moore Drive
Chester, SC 29706
Mailing Address: 102 Crescent Drive
Chester, SC 29706
County: Chester
Previous Orders: None
Permit Number: 12-206-00695
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Umi Japanese Restaurant (Individual/Entity), located in Chester, South Carolina, is a restaurant. The Department conducted inspections on August 16, 2017, June 19, 2018, and June 27, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

86) Order Type and Number: Consent Order 2018-206-03-111
Order Date: September 18, 2018
Individual/Entity: **Zorba's of St Andrews**
Facility: Zorba's of St Andrews
Location: 6169 St. Andrews Road
Columbia, SC 29212
Mailing Address: Same
County: Lexington
Previous Orders: 2015-206-03-100 (\$800.00)
Permit Number: 32-206-00882
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Zorba's of St Andrews (Individual/Entity), located in Columbia, South Carolina, is a restaurant. The Department conducted inspections on September 6, 2017, July 12, 2018, and July 18, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure there was no bare hand contact with ready-to-eat foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

87) Order Type and Number: Consent Order 2018-206-06-081
Order Date: September 19, 2018
Individual/Entity: **Shoney's #2237**
Facility: Shoney's #2237
Location: 1206 South Kings Highway
Myrtle Beach, SC 29577
Mailing Address: 1717 Elm Hill Pike, Suite B1
Nashville, TN 37210
County: Horry
Previous Orders: None
Permit Number: 26-206-10268
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Shoney's #2237 (Individual/Entity), located in Myrtle Beach, South Carolina, is a restaurant. The Department conducted inspections on September 21, 2017, March 22, 2018, and July 13, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of four hundred dollars **(\$400.00)**.

88) Order Type and Number: Consent Order 2018-206-06-090
Order Date: September 20, 2018
Individual/Entity: **McDonald's #5838**
Facility: McDonald's #5838
Location: 2931 Highway 17 South
Murrells Inlet, SC 29576
Mailing Address: 107 Burmaster Drive
Columbia, SC 29229
County: Horry
Previous Orders: None
Permit Number: 26-206-12864
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: McDonald's #5838 (Individual/Entity), located in Murrells Inlet, South Carolina, is a restaurant. The Department conducted inspections on August 10, 2017, October 4, 2017, and July 2, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods and failed to ensure written procedures were in place and made available to the Department when the facility uses time as a public health control.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

89) Order Type and Number: Consent Order 2018-206-03-117
Order Date: September 21, 2018
Individual/Entity: **Quick Stop**
Facility: Quick Stop
Location: 9102 Farrow Road
Columbia, SC 29203
Mailing Address: Same
County: Richland
Previous Orders: 2014-206-03-025 (\$500.00);
2015-206-03-028 (\$1,000.00)
Permit Number: 40-206-06837
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Quick Stop (Individual/Entity), located in Columbia, South Carolina, is a convenience store. The Department conducted inspections on August 22, 2017, June 12, 2018, June 21, 2018, and June 28, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that equipment is maintained in a state of repair and condition that meets the regulation requirements and failed to clearly and individually identify with the common name of the material on all working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

90) Order Type and Number: Consent Order 2018-206-06-084
Order Date: September 21, 2018
Individual/Entity: **Famous Wok**
Facility: Famous Wok
Location: 10835 Kings Road
Myrtle Beach, SC 29572
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-08828
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Famous Wok (Individual/Entity), located in Myrtle Beach, South Carolina, is a restaurant. The Department conducted inspections on July 13, 2017, January 30, 2018, and July 5, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25, and pay a civil penalty in the amount of eight hundred dollars **(\$800.00)**.

* Unless otherwise specified, "Previous Orders" as listed in this report include orders issued by Environmental Affairs Programs within the last five (5) years.

Date: November 8, 2018

To: S.C. Board of Health and Environmental Control

From: Bureau of Air Quality

Re: Public Hearing for Notice of Final Regulation Amending Regulation 61-62, *Air Pollution Control Regulations and Standards*, Document No. 4815

I. Introduction

The Bureau of Air Quality (Bureau) proposes the attached Notice of Final Regulation amending Regulation 61-62, *Air Pollution Control Regulations and Standards*. Legal authority resides in South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 *et seq.* ("Pollution Control Act"), which authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these amendments.

II. Facts

1. Pursuant to the federal Clean Air Act ("CAA"), 42 U.S.C. Sections 7401 *et seq.*, and the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 *et seq.*, the South Carolina Department of Health and Environmental Control ("Department") proposes amending South Carolina Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the State Implementation Plan ("SIP") as follows:

a. R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits,

b. The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text,

c. R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling,

d. R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,

e. R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,


f. R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70, Title V Operating Permit Program, to update public participation procedures, and

g. Definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

2. The Department had a Notice of Drafting published in the October 27, 2017, *State Register* (Volume 41, Issue 10).
3. Appropriate Department staff conducted an internal review of the proposed amendments on March 1, 2018.
4. The Bureau received input from affected industry representatives on November 14, 2017, December 7, 2017, and December 15, 2017. The Bureau held stakeholder meetings on February 6, 2018, (South Carolina Manufacturers Alliance meeting) and March 2, 2018 (SC Chamber of Commerce Environmental/Technical Committee meeting).
5. The Department had a Notice of Proposed Regulation published in the June 22, 2018, *State Register* (Volume 42, Issue 6). The Department received public comments from EPA Region 4 staff by the July 23, 2018, close of the public comment period. Attachment B presents a summary of these public comments and Department responses.
6. Based on the EPA Region 4 comments, the Bureau has made substantive changes to the regulatory text of the Notice of Proposed Regulation approved by the Board in the June 7, 2018, Board meeting and published in the June 22, 2018, *State Register*. Descriptions of the changes appear in Attachment B, Summary of Public Comments and Department Responses.
7. In accordance with S.C. Code Section 1-23-120(A) (Supp. 2017), these amendments require General Assembly review.

III. Request for Approval

The Bureau respectfully requests the Board to grant a finding of need and reasonableness of the attached Notice of Final Regulation to proceed with submission to the General Assembly.


Rhonda B. Thompson, P.E.
Chief
Bureau of Air Quality


Myra C. Reece
Director
Environmental Affairs

Attachments:

- A. Notice of Final Regulation
- B. Summary of Public Comments and Department Responses

ATTACHMENT A

**STATE REGISTER NOTICE OF FINAL REGULATION
FOR REGULATION 61-62, Air Pollution Control Regulations and Standards**

November 8, 2018

Document No. 4815

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards.

Synopsis:

Pursuant to the federal Clean Air Act (“CAA”), 42 U.S.C. Sections 7401 et seq., and the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 et seq., the South Carolina Department of Health and Environmental Control (“Department”) is amending South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, and the State Implementation Plan (“SIP”) as follows:

1. R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits,
2. The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation’s text,
3. R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling,
4. R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,
5. R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,
6. R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70, Title V Operating Permit Program, to update public participation procedures, and
7. Definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

The Department does not anticipate an increase in costs to the state or its political subdivisions resulting from these revisions. These changes streamline existing state requirements, ensure consistency with federal law, and improve the overall organizational structure and clarity of the Department’s regulations. South

Carolina industries are already subject to national air quality standards as a matter of federal law. These amendments will benefit the regulated community by maintaining state implementation of federal requirements, as opposed to federal implementation.

In accordance with S.C. Code Section 1-23-120(A) (Supp. 2017), these amendments require General Assembly review.

The Department had a Notice of Drafting published in the October 27, 2017, State Register.

Section-by-Section Discussion of Amendments:

Regulation 61-62.1, Definitions and General Requirements

Amended codification and internal citations throughout to remove periods following numbers and/or letters, and replace them with parentheses enclosing updated alphanumeric characters for consistency with the 2014 South Carolina Legislative Council's Standards Manual.

Amended throughout to add the word "Part" or "Parts" to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Regulation 61-62.1, Section I, Definitions:

Paragraph (I)(26), Dioxins/Furans, is amended to strike "Code of Federal Regulations," as well as the parentheses around "CFR" and add the word "Part" to read "(40 CFR Part 60, Appendix A)" for clarity and consistency.

Regulation 61-62.1, Section I, Definitions:

Paragraph (I)(55), NAICS Code, is amended to add the numeral "(6)" after the word "six" to read "six (6)" to provide number denotation consistency throughout the text of the regulation.

Regulation 61-62.1, Section I, Definitions:

Paragraph (I)(97), Used Oil, (a) Spec. Oil (Specification Oil), is amended to strike "v. Nickel – 120 ppm maximum;" to be consistent with Department regulations and definitions for used oil.

Regulation 61-62.1, Section II, Permit Requirements:

Section (B), Exemptions from the Requirements to Obtain a Construction Permit, Paragraphs (B)(1)(b), (B)(1)(c), (B)(2)(a), and (B)(2)(b) are amended to strike " $\times 10^6$ " and add the word "million" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraphs (C)(1) and (C)(2) are amended to strike the word "and," insert a comma after the words "reviewed" and "signed," and add the words "and sealed," to read "reviewed, signed, and sealed" to reflect current professional practice guidelines and Department requirements.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(2)(c) is amended to strike " $\times 10^6$ " and replace with the word "million" for clarity and consistency. The period at the end of the sentence is stricken and is replaced it with a semi-colon for consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(2)(d) is inserted to read “Package-type concrete batch plants that are designed to be hauled to a site, set up, and broken down quickly, with little to no additional equipment needed to manufacture product.” This is to expressly include package-type concrete plants within the referenced exemption.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(3)(a) is amended to strike the phrase “and the name, mailing address, and telephone number of the owner or operator for the facility” and replace it with the phrase “(the name used to identify the facility at the location requesting the permit);” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(3)(b) is amended strike the phrase “and the name, mailing address, and telephone number of the facility’s contact person” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(3)(c) is inserted to add the sentence “The name, mailing address, e-mail address and telephone number of the owner or operator for the facility;” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, Paragraph (C)(3)(d) is inserted to add the sentence “The name, mailing address, e-mail address and telephone number of the facility’s air permit contact person;” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (C), Construction Permit Applications, former Paragraphs (C)(3)(c) through (C)(3)(p) are recodified to (C)(3)(e) through (C)(3)(r) for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (D), General Construction Permits, Paragraph (D)(2) is amended to add the word “Any” at the beginning of the sentence, to strike the upper case “G” to lower case “g” to read “general,” and strike the letter “s” from the word “permits” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (D), General Construction Permits, former Paragraph (D)(3) is recodified (D)(3)(a). Paragraph (D)(3), title, is added to read “Coverage under a General Construction Permit,” in response to a comment by the EPA for clarity.

Section (D), General Construction Permits, Paragraph (D)(3)(b) is inserted to read “A source that has submitted an individual construction permit application to the Department and has not requested coverage under the conditions and terms of a general construction permit for similar sources, but which is determined to qualify for coverage under a general construction permit, may be granted coverage under the general construction permit at the sole discretion of the Department.” This action is taken to reflect current work practices by Department staff and to clarify and streamline the application process. Also, the proposed wording of this paragraph has been clarified in response to a comment by the EPA.

Regulation 61-62.1, Section II, Permit Requirements:

Section (D), General Construction Permits, Paragraph (D)(4) is amended to add the word “A” at the beginning of the sentence, and change “Sources” to “source” for clarity and consistency. Also amended to

strike the word “a” before “source” in the latter part of the sentence and replace with “the” to read “the source” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (D), General Construction Permits, Paragraph (D)(5) is amended to strike the “s” after the word “source” and the phrase “request for” to read “The Department may grant a source authorization to operate under a general construction permit, but such a grant shall be a final permit action for purposes of judicial review” for appropriate punctuation, clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4) General Synthetic Minor Construction Permits, (E)(4)(b) is amended to strike “the general permit” at the end of the sentence and replace it with “coverage under a general synthetic minor construction permit” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, former (E)(4)(c) is recodified to (E)(4)(c)(1) and amended to add the phrase “synthetic minor construction” and to strike the word “the” in both instances of the second sentence and replace it with the word “a” for clarity and consistency. Paragraph (E)(4)(c), title, is added to read “Coverage under a General Synthetic Minor Construction Permit,” in response to a comment by the EPA for clarity.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(c)(2) is inserted to read “A source that has submitted an individual synthetic minor construction permit application and has not requested coverage under the conditions and terms of a general synthetic minor construction permit for similar sources, but which is determined to qualify for coverage under a general synthetic minor construction permit, may be granted coverage under the general synthetic minor construction permit at the sole discretion of the Department.” This action is taken to clarify current work practices by the Department and to streamline the application process. Also, the proposed wording of this paragraph has been clarified in response to a comment by the EPA

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(d) is amended to strike the phrase “the conditions and terms of the” and replace it with the phrase “coverage under a” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(e) is amended to replace “general permit” with “general synthetic minor construction permit” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(f) is amended to replace “general permit” with “general synthetic minor construction permit” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(g) is inserted for consistency and to clarify a source’s ability to request an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor construction permit.

Regulation 61-62.1, Section II, Permit Requirements:

Section (F), Operating Permits, Paragraph (F)(2) is inserted to add text to further explain compliance conditions for operating a source under the terms and conditions of a construction permit pending issuance of an operating permit.

Regulation 61-62.1, Section II, Permit Requirements:

Section (F), Operating Permits, former (F)(2) is recodified to (F)(3) and amended to clarify the paragraph's applicability to sources issued construction permits that include engineering and/or construction specifications.

Regulation 61-62.1, Section II, Permit Requirements:

Section (F), Operating Permits, former Paragraph (F)(3), Request for a New or Revised Operating Permit is recodified to (F)(4) for consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (F), Operating Permits, Paragraph (F)(5), General Operating Permits (including (F)(5)(a) through (F)(5)(f) and subparagraphs (F)(5)(c)(1) and (2)) is inserted to establish conditions for Department development and issuance of general operating permits to reflect current Department practices and streamline permit issuance. Also, the proposed wording of this section has been clarified in response to a comment by the EPA

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(2), General Provisions, former (G)(2)(d) is stricken to improve clarity and avoid duplication.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(2), General Provisions, former (G)(2)(e) and (G)(2)(f) are recodified to (G)(2)(d) and (G)(2)(e), respectively for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, former paragraph (G)(7)(c) is recodified (G)(7)(c)(1). Paragraph (G)(7)(c), title, is added to read "Coverage under a General Conditional Major Operating Permit" in response to a comment by the EPA for clarity.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(c)(2) is inserted to read "A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general conditional major operating permit for similar sources, but which is determined to qualify for coverage under a general conditional major operating permit, may be granted coverage under the general conditional major operating permit at the sole discretion of the Department." This action is taken to reflect current work practices by Department staff and to clarify and streamline the permit process. Also, the proposed wording of this paragraph has been clarified in response to a comment by the EPA

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(d) is amended to strike the phrase "the conditions and terms of" and replace it with the phrase "coverage under" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(e) is amended to strike the “s” after word “source” and to strike the phrase “request for” and add the phrase “conditional major operating” to read “The Department may grant a source authorization to operate under a general conditional major operating permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review.” for appropriate punctuation, clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(f) is amended to replace “general permit” with “general conditional major operating permit” for clarity and internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(g) is inserted for consistency and to clarify a source’s ability to request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, Paragraph (H)(1) is inserted to add language to improve clarity and reflect current Department practices regarding renewal of operating permits.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, former Paragraphs (H)(1) through (H)(4) are recodified to (H)(2) through (H)(5) respectively for consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(a) is amended to strike the phrase “and the name, mailing address, and telephone number of the owner or operator for the facility” and replace it with the phrase “(the name used to identify the facility at the location requesting the permit)” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(b) is amended to strike the phrase “and the name, mailing address, and telephone number of the facility’s contact person” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(c) is inserted to add the language “The name, mailing address, e-mail address and telephone number of the owner or operator for the facility;” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(d) is inserted to add the language “The name, mailing address, e-mail address and telephone number of the facility’s air permit contact person;” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (H), Operating Permit Renewal Requests, former Paragraphs (H)(5)(c) through (H)(5)(j) are recodified to (H)(5)(e) through (H)(5)(l) for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(1), Development of Registration Permits, (I)(1)(a) is amended to add the phrase “and issue a” and strike the letter “s” from permits so that the first sentence reads: “The Department may develop and issue a registration permit applicable to similar sources.” for punctuation, clarity and consistency. The remainder of (I)(1)(a) is recodified as (I)(1)(b) and amended to read “Any registration permit developed shall incorporate all requirements applicable to the construction and operation of similar sources and shall identify criteria by which sources may qualify for coverage under a registration permit.” for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(1), Development of Registration Permits, former (I)(1)(b) is recodified to (I)(1)(c) for internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, former Paragraph (I)(2)(a) is recodified (I)(2)(a)(1) and amended so that the first sentence reads “Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a registration permit for similar sources in lieu of a construction and operating permit as provided in Section II(A) and (F) above.” to clarify conditions and terms for applying for coverage under a registration permit. Paragraph (I)(2)(a), title, is added to read “Coverage under a Registration Permit” in response to a comment by the EPA for clarity.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(a)(2) is inserted to read “A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a registration permit for similar sources, but which is determined to qualify for a registration permit, may be granted coverage under the registration permit at the sole discretion of the Department.” This action is to clarify and streamline the permit process. Also, the proposed wording of this paragraph has been clarified in response to a comment by the EPA

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(b) is amended at the first sentence to strike the phrase “the conditions and terms of” and replace it with “coverage under” for clarity and consistency. The remainder of this subparagraph is recodified as (I)(2)(c) for clarity.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, former (I)(2)(c) is recodified to (I)(2)(d) and amended to strike “s request for” to read “The Department may grant a source authorization to operate under a registration permit, but such a grant shall be a final permit action for purposes of judicial review language.” to improve clarity and internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(e) is inserted to read “A source that qualifies for coverage under a Department issued registration permit may submit a permit application to the Department and request an individual permit in lieu of coverage under a general registration permit.” to specify that a source may request an individual permit.

Regulation 61-62.1, Section II, Permit Requirements:

Section (J), Permit Conditions, Paragraph (J)(2), Special Permit Conditions, (J)(2)(b) is amended to add a hyphen between the words “short” and “term” to read “short-term” for appropriate punctuation.

Regulation 61-62.1, Section II, Permit Requirements:

Section (N), Public Participation Procedures, Paragraph (N)(1) is amended to replace “posting to the Department’s website” with “posting to a public website identified by the Department” for consistency with federal regulations, and amended to clarify the Department’s authority to use additional means of public notice, including but not limited to public meetings.

Regulation 61-62.1, Section IV, Source Tests:

Section (B), Submission and Approval of a Site-Specific Test Plan, Paragraph (B)(5)(a) is amended to add the phrase “or as otherwise specified by a relevant federal or state requirement” to read “The owner, operator, or representative shall submit site-specific test plans or a letter which amends a previously approved test plan at least forty-five (45) days prior to the proposed test date or as otherwise specified by a relevant federal or state requirement.” to cite appropriate federal or state requirements for amending an approved test plan to reflect current Department practice.

Regulation 61-62.1, Section IV, Source Tests:

Section (C), Requirements for a Site-Specific Test Plan, is amended to strike the parentheses around the internal citations and reflect the recodification of “IV.C.1” and “C.8” to “IV(C)(1)” and “(C)(8)” for consistency.

Regulation 61-62.1, Section IV, Source Tests:

Section (C), Requirements for a Site-Specific Test Plan, Paragraph (C)(3), Process Descriptions, (C)(3)(b) is amended to read “Process design rates, normal operating rates, and operating rates specified by applicable regulation” to clarify the appropriate rate requirement.

Regulation 61-62.1, Section IV, Source Tests:

Section (D), Notification and Conduct of Source Tests, Paragraph (D)(1) is amended to add the phrase “or as otherwise specified by a relevant federal or state requirement” to read “Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that a complete written notification is submitted to the Department at least two (2) weeks prior to the test date or as otherwise specified by a relevant federal or state requirement.” to clarify the appropriate written notification period prior to conducting a source test subject to this section for clarity and internal consistency.

Regulation 61-62.1, Section IV, Source Tests:

Section (D), Notification and Conduct of Source Tests, Paragraph (D)(5) is amended to add the phrase “or as otherwise specified by a relevant federal or state requirement” to read “Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested or as otherwise specified in a relevant federal or state requirement.” to clarify the appropriate production rate or operating parameter to be used while conducting a source test for clarity and internal consistency.

Regulation 61-62.1, Section IV, Source Tests:

Section (F), Final Source Test Report, Paragraph (F)(1) is amended to strike the word “standard” and replace it with “requirement” for clarity and consistency.

Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards

Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards:

First paragraph is amended to add the word “Part” to citations of parts in the Code of Federal Regulations citations for clarity and consistency. The last sentence is stricken as obsolete because the pollutant “Gaseous Fluorides (as HF)” and all associated parameters are no longer a part of this regulation.

Regulation 61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x)

Amended codification and internal citations throughout to replace periods following numbers and/or letters with parentheses enclosing updated alphanumeric characters for consistency with the 2014 South Carolina Legislative Council’s Standards Manual.

Amended throughout to add the word “Part” or “Parts” to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:

Section (B), Exemptions, Paragraphs (B)(1) and (B)(2) are stricken and replaced with language to ensure consistency and clarify those sources that are exempt from the requirements of this regulation, including boilers of less than 10 million British thermal unit per hour (BTU/hr) rated input. Paragraph (B)(3) is added to exempt sources with an uncontrolled potential to emit of less than five tons per year of NO_x. Former (B)(3) through (B)(16) are recodified to (B)(4) through (B)(17) for consistency.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:

Section (B), Exemptions, Paragraph (B)(7) is amended to strike the number “6” and replace with “7” to reflect Regulation 61-62.96, CAIR NO_x Annual Trading Program is no longer in effect, and is replaced with Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:

Section (B), Exemptions, Paragraph (B)(15) is amended to change alphanumeric codification after “Section” from “(1)” to “I” for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:

Section (G) is amended to add a comma after “June 25, 2004” to correct punctuation and for consistency and to change alphanumeric codification after “Section” from “(1)” to “I” for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:

Section (I) is amended to add a comma after “June 25, 2004” to correct punctuation and for consistency and to strike the parentheses enclosing “I” to correct codification for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:

Section (J) is inserted to define the term non-routine maintenance for clarification.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:

Former Section (J), Source, is recodified as (K) and amended to strike the phrase “an individual NO_x emission unit” and replace it with the phrase “a stationary NO_x emission unit, comprised of one or more burners” to clarify the definition.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:

Table 1- NO_x Control Standards, Subsection “Propane and/or Natural Gas-Fired Boilers”, first column, is amended to delete an extra space between the open parenthesis and MMBtu/hr to read “(MMBtu/hr).”

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:

Table 1- NO_x Control Standards, Subsection “Propane and/or Natural Gas-Fired Boilers”, second column, is amended to strike the word "metric". The use of the word "metric" is inaccurate for (MMBTU), which is meant to represent a thousand thousand BTUs, equivalent to one million BTUs.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_x Control Standards, Subsection “Multiple Fuel Boilers”, first block, second column/ninth line, is amended to add the phrase “and/or propane,” to the end of “...from combustion of natural gas,” to clarify fuel types covered under the emission limit.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_x Control Standards, Subsection “Multiple Fuel Boilers”, second block, second column/ninth line, is amended to add the phrase “and/or propane,” to the end of “...from combustion of natural gas,” to clarify fuel types covered under the emission limit.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_x Control Standards, Subsection “Fluidized Bed Combustion (FBC) Boiler” title is amended to center it in the table for internal consistency.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_x Control Standards, Subsection “Other” title is amended to center it in the table for internal consistency. Subsection “Other,” first block, second column/first line, is amended to strike the word “Forth” and replace it with the word “Fourth” to correct spelling.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(1), CEMS, (A)(1)(d)(i)(B) is amended to delete the phrase “startups, shutdowns, and” to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, is amended to add the second sentence “If the owner or operator of a boiler is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:” to clarify tune-up instructions for sources not subject to the Boiler MACT.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, is amended to insert “(a) The first tune-up shall be conducted no more than twenty-four (24) months from start-up of operation for new affected sources.” to clarify the timeframe for tune-up to occur.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, former (A)(4)(a) is recodified to (A)(4)(b), and amended to strike the letter “s” from “owners” to read “owner” to correct punctuation and for consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, former (A)(4)(b) and (A)(4)(c) are recodified to (A)(4)(c) and (A)(4)(d), respectively for consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (A), Boilers, Paragraph (A)(5), Other Requirements, is amended to delete the phrase “startup, shutdown, or” to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (B), Internal Combustion Engines, Paragraph (B)(3), Tune-ups, is amended to add a second sentence: “If the owner or operator of an internal combustion engine is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:” to clarify tune-up instructions for sources not subject to the Boiler MACT.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (B), Internal Combustion Engines, Paragraph (B)(5), Other Requirements, is amended to delete the phrase “startup, shutdown, or” to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (C), Turbines, Paragraph (C)(3), Periodic Monitoring and/or Source Test, (C)(3)(d), is amended to add a comma after “twenty-four (24) months” to correct punctuation and for internal consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (C), Turbines, Paragraph (C)(6), Other Requirements, is amended to delete the phrase “startup, shutdown, or” to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Section (D), All Other Affected Source Types, is amended to add section (D)(4) “Other Requirements” and the text “The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.” to describe record keeping requirements for an affected source during these conditions.

Regulation 61-62.5, Standard No. 5.2, Section VII, Tune-up Requirements For Existing Sources:

Section (A) is amended to strike language addressing the deadline for the first tune-up for new affected sources to avoid duplication and to correct for text error.

Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration

Amended codification and internal citations throughout to update alphanumeric characters for consistency with the 2014 South Carolina Legislative Council’s Standards Manual.

Amended throughout to strike the abbreviation “(tpy)” and replace it with the phrase “tons per year” for clarity and consistency.

Amended throughout to add the word “Part” or “Parts” to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Amended throughout to write out the numbers such as “twenty-four” and place parentheses around the numerals for the phrases to provide number denotation consistency throughout the text of the regulation.

Amended throughout to strike the word “paragraph” and replace with “Section” when citing sections for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (A)(2), Applicability procedures:

Former (a)(2)(iv)(a) is recodified (A)(2)(d)(i), and amended to strike the phrase “paragraphs (a)(2)(v) and (vi)” and replace with the phrase “paragraph (A)(2)(e)” to reflect recodification and remove second nonexistent citation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Section (B), Definitions, is amended to remove quotation marks from each defined term for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(5)(ii)(b) is recodified (B)(5)(b)(ii), and amended to strike the period at the end of the paragraph, and add the phrase “and would be constructed in the same state as the state proposing the redesignation” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(9) is recodified (B)(9)(a), and is amended to strike the numbers “003-005-00176-0” and replace with “003-005-00716-0” to correct a typographical error.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Paragraph (B)(9)(b) is added for consistency with changes to the federal definition of “Building, structure, facility or installation.”

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(10), (b)(30)(ii), and (b)(32)(ii) are recodified (B)(10), (B)(30)(b), and (B)(32)(b), and are amended to strike the phrase “oxides of” and add the word “oxides” to read “nitrogen oxides” for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former Paragraphs (b)(30)(iii)(e) and (b)(30)(iii)(f) are recodified (B)(30)(c)(v) and (B)(30)(c)(vi), and are amended to strike the lowercase “subpart” and replace with capitalized “Subpart” and add the phrase “Part 51,” to read “40 CFR Part 51, Subpart I” to properly cite the federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(30)(v) is recodified (B)(30)(e), and amended to strike all language except the codification, and add “[Reserved]” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(32)(i)(a) is recodified (B)(32)(a)(i), and amended to add the phrase “(with thermal dryers)” to the reference to primary aluminum ore reduction plants to read “primary aluminum ore reduction plants (with thermal dryers),” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(34)(iii) is recodified (B)(34)(c), and amended to strike subparagraphs formerly codified (b), (c) and (d) in their entirety, and amended to add “[Reserved]” to the newly codified paragraph “(B)(34)(c)(ii)” to clarify the criteria for creditable emissions in the regulation’s definition of net emissions increase.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(36) is recodified (B)(36), and amended to strike the phrase “[Reserved]” and add the definition for pollution prevention, for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(44)(i)(b) is recodified (B)(44)(a)(ii), and amended to strike the former citation to “(i)(b)” and add the word “this” to read “identified under this paragraph” for clarity.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(45) is recodified (B)(45), and amended to strike the word “credible” and replace with the word “creditable” to correct a typographical error.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former (b)(49)(i) is recodified (B)(49)(a), and amended to strike the non-codified list titled “Pollutant and Emissions Rate” and replace the list with a table format for ease of use.

Regulation 61-62.5, Standard No. 7, Section (C), Ambient air increments:

Amended to codify previously uncodified text as Paragraphs (C)(1) and (C)(2) for correct codification.

Regulation 61-62.5, Standard No. 7, Section (G), Redesignations:

Former (g)(4) is recodified (G)(4), and amended to strike the first colon and capitalized phrase “Provided, That” and replace with a comma and the lowercase phrase “provided that” to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:

Former (i)(2) is recodified (I)(2), and amended to replace “section” with “Section” for internal consistency.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:

Former (i)(5)(i) is recodified (I)(5)(a), and amended to strike the non-codified list following the phrase “less than the following amounts” and replace the list with a table format for ease of use.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:

Revised to add language in alphanumeric order at paragraph (I)(11) and subparagraphs (a) through (b), to clarify sources that are exempt from Section (K) of this regulation, to ensure consistency with the federal requirements.

Regulation 61-62.5, Standard No. 7, Section (P):

Retitled “Sources impacting Federal Class I areas – additional requirements.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (P):

Former (p)(5) is recodified (P)(5), and amended to strike the first colon and capitalized phrase “Provided, That” and replace with a comma and the lowercase phrase “provided that” to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (P):

Former (p)(6) is recodified (P)(6), and amended to strike the colon and the capitalized word “Provided”, and replace them with the lowercase word “provided” to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (P):

Former (p)(7) is recodified (P)(7), and amended to strike the colon and the capitalized word “Provided”, and replace them with the lowercase word “provided” to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (Q), Public participation:

Former (q)(2)(iii) is recodified (Q)(2)(c), and amended to define the consistent noticing method for draft permits subject to this regulation, to read “Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).”

Regulation 61-62.5, Standard No. 7, Section (R), Source obligation:

Former (r)(6) is recodified (R)(6), and amended to strike the word “to” in the first sentence and replace it with the phrase “with respect to any regulated NSR pollutant emitted from” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (R), Source obligation:

Paragraphs (R)(6)(c) and (R)(6)(g) are inserted in alpha-numeric order to ensure consistency with the federal requirements, and former subparagraphs (r)(6)(i), (r)(6)(ii), and (r)(6)(iii) through (r)(6)(v) are recodified as (R)(6)(a), (R)(6)(b), and (R)(6)(d) through (R)(6)(f), for internal consistency.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:

Former (aa)(1)(ii)(b) is recodified (AA)(1)(b)(ii), and amended to add the phrase “the change” to the second sentence to read “However, the change will be reviewed” for clarity and grammatical correctness, and amended to correct the internal reference in the second sentence to read “Regulation 61-62.1 Section II, Permit Requirements” for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:

Former (aa)(2), Definitions, is recodified (AA)(2), and amended to remove quotation marks from each definition for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:

Former (aa)(5) is recodified (AA)(5), and amended to change “section” to “Section” and add “This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:

Former (aa)(14), (aa)(14)(i)(g), and (aa)(14)(ii)(d) are recodified (AA)(14), (AA)(14)(a)(vii), and (AA)(14)(b)(iv), and amended to strike the phrase “the applicable title V operating permit program” and replace with the phrase “Regulation 61-62.70” for clarity.

Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR)

Amended codification and internal citations throughout to update alphanumeric characters for consistency with the 2014 South Carolina Legislative Council’s Standards Manual, and to reflect repositioning of various provisions for improved organization and clarity.

Amended throughout to strike the word “paragraph” and replace with “Section” when citing sections for clarity and consistency.

Amended throughout to strike the phrase “oxides of nitrogen” and add the phrase “nitrogen oxides” for clarity and consistency.

Amended throughout to strike the abbreviation “(tpy)” and replace it with the phrase “tons per year” for clarity and consistency.

Amended throughout to add the word “Part” or “Parts” to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Amended throughout to write out the numbers such as “twenty-four” and place parentheses around the numerals to provide number denotation consistency throughout the text of the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:

Former Section (a) is recodified Section (A), and amended to include former paragraphs (b)(1) through (b)(7) recodified as paragraphs (A)(4) through (A)(9) in alphanumeric order, and strike the section title “(b) Applicability procedures.” Section (A) is also amended to add the language formerly codified at Section (e), “Exemptions”, to the newly codified paragraph (A)(10) and subparagraphs (A)(10)(a) through (A)(10)(aa). These revisions are to ensure clarity, improved organization, and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:

Former (b)(1) is recodified (A)(4), and amended to strike the word “contained” and replace it with “as defined” for consistency throughout the regulation, and amended to strike the citation “(15)” and replace it with the citation “(B)(37)” to correct a typographical error with the citation of the definition of “Significant.”

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:

Former (b)(4) is recodified (A)(7), and amended to strike the phrase “(b)(37) of Regulation 61-62.5 Standard 7, “Prevention of Significant Deterioration” (“Standard 7”)” and replace it with the citation “(B)(27)” to properly cite the definition within the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Section (c) is recodified Section (B), and amended to revise codification and citations in alphanumeric order and to remove quotation marks from each defined term for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B) (former Paragraph (c)) is amended to strike all text after the title and replace with the phrase “For the purposes of this regulation:” for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraphs (B)(2), (B)(4), and (B)(6) though (B)(19) are inserted in alpha-numeric order to add definitions for: “Allowable emissions”, “Begin actual construction”, “Building, structure, facility or installation”, “Temporary clean coal technology demonstration project”, “Clean coal technology”, “Clean coal technology demonstration project”, “Commence”, “Construction”, “Continuous emissions monitoring system (CEMS)”, “Continuous emissions rate monitoring system (CERMS)”, “Continuous parameter monitoring system (CPMS)”, “Electric utility steam generating unit”, “Emissions unit”, “Federal Land

Manager”, “Federally enforceable”, and “Fugitive emissions”, to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Paragraphs (c)(2) and (c)(3) are recodified as (B)(3) and (B)(5) respectively to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Paragraph (c)(4) and the word “[Reserved]” are stricken to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Paragraphs (c)(5) through (c)(7) are recodified as (B)(20) through (B)(22) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former (c)(5)(B) is recodified (B)(20)(b), and amended to strike the word “permit” and add the word “allow” to ensure clarity, and amended in two instances to change the word “emissions” to “emission” to ensure consistency with federal regulations, and amended to replace “a stationary source” with “the stationary source” to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(21)(c)(ii) is amended to replace “sections” with “Sections” for internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(21)(c)(iii) is amended to replace “section” with “under Section” for clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Paragraphs (c)(6)(C)(v)(a) and (c)(6)(C)(vi) are recodified (B)(21)(c)(v)(1) and (B)(21)(c)(vi), and amended to add the phrase “pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166” for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(21)(e) is added and reserved to reflect the stay of corresponding federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former (c)(7)(A) is recodified (B)(22)(a), and amended to strike the phrase “paragraphs (c)(7)(A)(i)(a) through (e) of this section.” and replace it with “the following table:”. Paragraph (B)(22)(a) is also amended to strike subparagraphs formerly codified (c)(7)(A)(a) through (c)(7)(A)(d) and replace the codified list with an expanded table format for increased comprehensiveness and ease of use. Paragraph (B)(22)(a) is also amended to replace “which” with “that” for correct grammar, and to replace “Act” with “Clean Air Act” for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(22)(c)(xxvii) is amended to replace “section” with “Section” for internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(23) is inserted in alpha-numeric order to add the definition for “Necessary preconstruction approvals or permits”, to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(8) and (c)(9) are recodified as Paragraphs (B)(24) and (B)(25) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(B) is recodified (B)(24)(b), and amended to strike the phrase “before the date that the increase from the particular change occurs;” and add the word “between;” and amended to add subparagraphs (i) through (ii) to clarify the timeframe for contemporaneous increases or decreases in actual emissions in the regulation’s definition of net emissions increase.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(8)(C) is recodified (B)(24)(c) and amended to strike former subparagraph (c)(8)(C)(i), and amended to recodify former (c)(8)(C)(ii) as (B)(24)(c)(i), and amended to add “[Reserved]” to the newly codified subparagraph “(B)(24)(c)(ii)” to clarify the criteria for creditable emissions in the regulation’s definition of net emissions increase.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(8)(D) is recodified (B)(24)(d), and amended to strike the period and replace with semicolon for consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(i) is recodified (B)(24)(e)(i), and amended to add an “s” to “emission” to read “actual emissions” and amended to add a comma to read “allowable emissions,” for clarity and consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(ii) is recodified (B)(24)(e)(ii), and amended to strike the word “and” after the semicolon for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(iii) is recodified (B)(24)(e)(iii), and amended to add the phrase “under regulations approved pursuant to 40 CFR Part 51, Subpart I” for consistency with federal regulation, and to add the word “and” after the semicolon for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(F) is recodified (B)(24)(f), and amended to strike the period at the end of the second sentence and replace with a semicolon for correct codification and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(9) is recodified (B)(25), and amended to strike the lowercase word “appendix” and replace with “Appendix” for consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(10) and the word “[Reserved]” are stricken to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraphs (B)(26) through (B)(30) are inserted in alphanumeric order to add definitions for: “Pollution prevention”, “Potential to emit”, “Predictive emissions monitoring system (PEMS)”, “Prevention of Significant Deterioration (PSD) permit”, and “Project”, to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(11) is recodified as (B)(31) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(11)(B)(iv) is recodified (B)(31)(b)(iv), and amended to strike the phrase “under paragraph (b)(37) of Standard 7” and add the phrase “in paragraph (B)(27) of this section” to properly cite the referenced definition within the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(12) is stricken in entirety to reflect the provision’s recodification at (B)(29).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13) is recodified as (B)(32) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(C) is recodified (B)(32)(c), and amended to add the phrase “identified under this paragraph as” for consistency with federal regulations, and amended to strike the word “a” in “a constituent” and replace with the word “such” for clarity and consistency with federal regulations, and amended to strike former subparagraphs (c)(13)(C)(c) and (c)(13)(C)(d) for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(C)(b) is recodified (B)(32)(c)(ii), and amended to strike the phrase “is a precursor” and add a comma and the phrase “volatile organic compounds, nitrogen oxides, and ammonia are precursors” for consistency with federal regulations, and amended to strike the word “all” and replace with “any” and strike the “s” in “areas” for consistency with federal regulations, and amended to strike the semicolon at the end of the paragraph and replace with a period for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(D) is recodified (B)(32)(d), and amended to add the phrase “nonattainment major NSR” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraphs (B)(33) through (B)(36) are inserted in alphanumeric order to add definitions for: “Replacement unit”, “Resource recovery facility”, “Reviewing authority”, and “Secondary emissions”, to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(14) and (c)(15) are recodified as (B)(37) and (B)(38) respectively to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(14) is recodified (B)(37), and amended to strike the word “as” and replace with the word “a” for consistency with federal regulations, and amended to strike the non-codified list titled “Pollutant Emission Rate” and replace the list with an expanded table format for comprehensiveness and ease of use.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(39) is inserted in alphanumeric order to add a definition for: “Stationary source”, to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Former Paragraph (c)(16) is recodified as (B)(40) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Former Section (d) is recodified Section (C), and amended to revise codification and citations in alphanumeric order to ensure clarity and internal consistency. Former Paragraph (d) is stricken to reflect codification and formatting changes to Section (C).

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Former (d)(1) is recodified (C)(1), and amended to strike the phrase “Conditions for approval” and replace it with “Permitting requirements.” Former Subparagraph (d)(1)(A) is recodified (C)(1)(a), and amended to identify the meaning of the acronym “LAER.” Former Subparagraph (d)(1)(C) is recodified (C)(1)(c), and amended to strike the phrase “following provisions” and add the phrase “requirements in Section (D), Offset standards” to codify offset standard language into a separate section for clarity and usability. Former Subparagraphs (d)(1)(D) and (d)(1)(E) are recodified (C)(1)(d) and (C)(1)(e) and repositioned to follow in alphanumeric order after subparagraphs (C)(1)(a) through (C)(1)(c) for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Paragraph (C)(2) is added to read “Exemptions. Temporary emission sources, such as pilot plants and portable facilities which will be relocated outside of the nonattainment area after a short period of time, are exempt from the requirements of paragraphs (C)(1)(c) and (C)(1)(d) of this section.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Paragraph (C)(3) is added to read “Secondary emissions. Secondary emissions need not be considered in determining whether the stationary source or modification is major. However, if a source is subject to this regulation on the basis of the direct emissions from the source, the applicable conditions in paragraph (C)(1) must also be met for secondary emissions. However, secondary emissions may be exempt from paragraphs (C)(1)(a) and (C)(1)(b) of this section.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Paragraph (C)(4) is added to read “The requirements of this regulation applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Section (D) is added, and titled “Offset standards.” to incorporate language formerly codified (d)(1)(C)(i) through (d)(1)(C)(v)(a)(4)(A)(vii) and (d)(1)(C)(viii) and (d)(1)(C)(xi) into a separate section for clarity and usability. Revised codification and citations in alphanumeric order to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Paragraph (D)(1) is added to read “All emission reductions claimed as offset credit shall be permanent, quantifiable, federally enforceable and surplus;” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former (d)(1)(C)(i) is recodified (D)(2), and amended to add the phrase “(as when a state has a single particulate emission limit for all fuels)” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(ii) is recodified (D)(3), and amended to add an “s” to “emission” to read “emissions offset credit” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(iii)(a) is recodified (D)(4), and amended to strike the phrase “if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA-approved attainment plan” and add “for offsets if the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. No credit may be given for shutdowns that occurred before August 7, 1977.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(iii)(b) is recodified (D)(5), and amended to strike the phrase “Such reductions may be credited if” and replace it with the phrase “Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements on paragraph (D)(4) may be generally credited only if:” for consistency with federal regulations. The remainder of the paragraph is amended to divide the paragraph into subparagraphs (D)(5)(a) and (D)(5)(b) for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(5)(a) is amended to strike the word “the” and replace with the word “The” at the beginning of the newly codified paragraph, and amended to strike the comma and replace with a semicolon to read “The shutdown or curtailment occurred on or after the date the new source permit application is filed; or,” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(5)(b) is amended to strike the phrase “if the” and replace with the word “The” at the beginning of the newly codified paragraph, and amended to strike the phrase “cutoff date provision of paragraph (d)(C)(iii)(a) are observed” and replace with the phrase “emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4)” to read “The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4).” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(iv) is recodified (D)(6). Former Paragraph (d)(1)(C)(v) is stricken to reflect recodification at (D)(1). Former Paragraphs (d)(1)(C)(viii) and (d)(1)(C)(xi) are recodified (D)(7) and (D)(8) respectively and repositioned in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(9) is added to read “If a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former Paragraph (d)(1)(C)(v)(a) is recodified (D)(10), and amended to strike the phrase “Eligibility as Emission Offsets.” for clarity, and amended to strike former subparagraphs (d)(1)(C)(v)(a)(1) and (d)(1)(C)(v)(a)(1)(A). Former subparagraph (d)(1)(C)(v)(a)(1)(B) is recodified (D)(11) for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former Paragraph (d)(1)(C)(v)(a)(2) is recodified (D)(12), and amended to strike subparagraphs (d)(1)(C)(v)(a)(2)(D) through (d)(1)(C)(v)(a)(2)(F) for clarity, and amended to recodify subparagraphs (A), (B), (C), and (G) in alphanumeric order as (D)(12)(a) through (D)(12)(d) for consistency in codification. Paragraph (D)(12) is amended to correct grammar and add the missing word “of”. Paragraph (D)(12)(c) is amended to add “or” for clarity. Paragraph (D)(12)(d) is amended to add the word “federally” to read “real, permanent, quantifiable, federally enforceable, and surplus” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former Paragraph (d)(1)(C)(v)(a)(3) is recodified as (D)(13).

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former Paragraph (d)(1)(C)(v)(a)(4) is recodified (D)(14), and amended to add the phrase “emission reductions that are not considered surplus” from former subparagraph (d)(1)(C)(v)(a)(4)(A), and strike former subparagraph (d)(1)(C)(v)(a)(4)(A) for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Former Subparagraphs (d)(1)(C)(v)(a)(4)(A)(i) through (d)(1)(C)(v)(a)(4)(A)(vii) are recodified (D)(14)(a) through (D)(14)(g) for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Paragraphs (D)(14)(b) and (D)(14)(c) are amended for improved punctuation. Paragraph (D)(14)(c) is amended to strike the duplicate word “VOCs” to correct a typographical error, and amended to strike “CAA” and replace it with “Clean Air Act” to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:

Paragraphs (D)(14)(d), (D)(14)(e), and (D)(14)(g) are amended to add “Emission reductions from” to the beginning of each paragraph, for clarity and consistency. Paragraph (D)(14)(g) is amended to strike “notifying” and replace with “with notification” for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (E), Calculation of Emission Offsets:

Former Paragraph (d)(1)(C)(v)(b) is recodified Section (E) to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (F), Location of offsetting emissions:

Former Paragraph (d)(1)(C)(vi) is recodified Section (F), and amended to codify (a) and (b) language into subparagraphs (F)(1) and (F)(2) for consistency with federal regulation and clarity.

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:

Paragraph (d)(1)(C)(vii) is recodified Section (G).

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:

Paragraph (d)(1)(C)(vii)(b) is recodified (G)(2), and amended to add the word “increases” to read “Emissions increases for ozone nonattainment areas shall” for clarity. The table is amended to strike “Subpart I” and “>1 to 1” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:

Former paragraphs (d)(1)(C)(viii) through (d)(1)(E) are stricken for reorganization of regulatory text.

Regulation 61-62.5, Standard No. 7.1, Section (H), Interpollutant offsetting:
Section (H) is added to provide federal language on interpollutant offsetting, for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (I), Banking of emission offsets:
Section (I) is added to provide language on banking of emission offsets for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (J)
Section (J) is added in alphanumeric order, and the word “[Reserved]” is added.

Regulation 61-62.5, Standard No. 7.1, Section (K)
Section (K) is added in alphanumeric order, and the word “[Reserved]” is added.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Section (L), title, is added to read “Source obligation.” for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraphs (d)(2)(A) through (d)(2)(D) are recodified (L)(1) through (L)(4) in alphanumeric order for consistency. Paragraph (L)(3) is amended to strike “plan” and replace with “State Implementation Plan” for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(3) is recodified (L)(5), and amended to add the title phrase “Monitoring, Recordkeeping, and Reporting.” for clarity and usability, and amended to strike the word “to” in “apply to” and replace it with the phrase “with respect to any regulated NSR pollutant emitted from” for consistency with federal regulations, and amended to add the phrase “of such pollutant” following the word “increase” for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Paragraph (L)(5)(c) is added in alphanumeric order to read “If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (L)(5)(b) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Paragraph (L)(6) is added in alphanumeric order to provide federal language on “reasonable possibility” for consistency with federal regulations. Revised language to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(4) is stricken, because this language pertains to PAL requirements, and is covered in the Actuals PALs section.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(5) is recodified (L)(7) in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Section (M), title, added to read “Public participation.” for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former Paragraph (d)(6) is recodified (M)(1), and amended to strike the phrase “Public Participation”

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former paragraph (d)(7) and subparagraphs (d)(7)(i) through (d)(7)(x) are recodified (M)(2) and subparagraphs (M)(2)(a) through (M)(2)(j). Amended throughout to strike the word “plant” and replace with the word “facility” for clarity and consistency. Revised language to ensure clarity and internal consistency and revised codification and citations in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(iii) is recodified (M)(2)(c), and amended to add the sentence “This requirement may be met by making these materials available at a physical location or on a public website identified by the Department.” for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(iv) is recodified (M)(2)(d), and amended to read “Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).” to define the Department’s consistent noticing method for public notice, for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(vii) is recodified (M)(2)(g), and amended to strike the word “locations” and replace it with the phrase “location or on the same website” for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(ix) is recodified (M)(2)(i), and amended to add the phrase “or on the same website” for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Former Section (e), Exemptions:
Former section (e) is stricken in its entirety for reorganization of regulatory text. Former reserved sections (f) through (h) are stricken in their entirety for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former section (i) is recodified (N) and amended to revise codification and citations in alphanumeric order. Section (N) is amended throughout to strike citations to Regulation 61-62.5 Standard 7, “Prevention of Significant Deterioration” and replace with citations within Regulation 61-62.5, Standard 7.1, for internal consistency and usability.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(1)(iii)(B) is recodified (N)(1)(c)(ii), and amended to correct the citation to Regulation 61-62.1, Section II, “Permit Requirements.”

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(2)(i) is recodified (N)(2)(a), and amended to change the citation of “(c)(1)” to “(B)(3)” to correctly cite the definition of baseline actual emissions.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(2)(iv)(B) is recodified (N)(2)(d)(ii), and amended to strike “section” and replace it with “Section” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(5) is recodified (N)(5), and amended to add the sentence “This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment.” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(14)(i)(G) is recodified (N)(14)(a)(vii), and amended to strike the phrase “Title V Operating Permit Program” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(14)(ii)(D) is recodified (N)(14)(b)(iv), and amended to strike the phrase “the applicable Title V operating permit program” and add the citation “Regulation 61-62.70” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (O):
Former Paragraph (j) is recodified (O) to ensure clarity and internal consistency.

Regulation 61-62.70, Title V Operating Permit Program

Regulation 61-62.70, Section 70.7, Permit issuance, renewal, reopening, and revisions:
Paragraph (h)(1) is amended to define the Department’s consistent noticing method for public notice, for consistency with federal regulation changes to public noticing methods.

Instructions: Amend Regulation 61-62, Air Pollution Control Regulations and Standards, in the South Carolina Code of Regulations pursuant to each instruction provided below with the text of the amendments.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

61-62.1. Definitions and General Requirements.

SECTION I – DEFINITIONS

The following words and phrases when used in the Regulations and Standards shall, for the purpose of these regulations, have the meanings respectively ascribed to them in this section, unless a different meaning is clearly indicated. This section augments the South Carolina Pollution Control Act.

~~1-(1)~~ Acid Mist – Means mist or droplets of sulfuric or other acids. Sulfuric acid mist includes sulfur trioxide (SO₃) and sulfuric acid vapor as well as liquid mist.

~~2-(2)~~ Add – Means additions to a process which will increase size, scope, or emissions from such process.

~~3~~-(3) Administrator – Means the Administrator of the United States Environmental Protection Agency (EPA) or his/her designee.

~~4~~-(4) Afterburner – Means an auxiliary burner for destroying unburned or partially burned combustion gases after they have passed from the combustion chamber.

~~5~~-(5) Air Curtain Incinerator – Means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incinerators of this type can be constructed above or below ground and require a refractory lined chamber or pit.

~~6~~-(6) Alter – Means modification or change in a process or processes which would affect emissions to the atmosphere.

~~7~~-(7) Ambient Air Quality Standards – Means the standard for the quality of ambient air at or beyond a property line on which a source of pollution is emitting.

~~8~~-(8) Application – Means a form provided by the Department which is prescribed to provide the information required to grant approval to construct and operate a source or an incinerator; or to report an existing incinerator.

~~9~~-(9) Biologicals – Means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

~~10~~-(10) Blood Products – Means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

~~11~~-(11) Board – Means Board of Health and Environmental Control.

~~12~~-(12) Body Fluids – Means liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal, and pericardial fluids; and semen and vaginal secretions.

~~13~~-(13) Boiler – Means an enclosed device using controlled flame combustion and having specific characteristics including the following:

~~a~~-(a) The combustion chamber and primary energy recovery section shall be of integral design (for example, waste heat recovery boilers attached to incinerators are not boilers). To be of integral design, the combustion chamber and the primary energy recovery sections (such as water walls and super heaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not physically be formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

~~13.~~(b) At least seventy-five (75) percent of recovered energy shall be “exported,” for example, not used for internal uses like preheating of combustion air or fuel, or driving combustion air fans or feedwater pumps.

~~14.~~(14) Bypass Stack – Means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

~~15.~~(15) CAA – Means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq. Also referred to as “the Act.”

~~16.~~(16) Chemotherapeutic Waste – Means all waste resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells. Chemotherapeutic waste shall not include any waste containing antineoplastic agents that are listed as hazardous waste under Section 261 of Regulation 61-79, Hazardous Waste Management.

~~17.~~(17) Clean Wood – Means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition waste (including but not limited to railroad ties and telephone poles).

~~18.~~(18) Code of Federal Regulations (CFR) – Means the general and permanent rules codified and published in the Federal Register by the departments and agencies of the federal government.

~~19.~~(19) Commercial Incinerator – Means an incinerator that burns non-hazardous waste from commercial activities with a design capacity of no more than 1250 pounds per hour (lb/hr) and which burns no more than six (6) tons per day (tons/day). Incinerators of this type not meeting these limits are considered municipal waste combustors. This definition does not include retail and industrial incinerators nor does it include waste from maintenance activities at commercial establishments.

~~20.~~(20) Commissioner – Means the Commissioner (also known as the Director) of the Department of Health and Environmental Control.

~~21.~~(21) Conditional Major Source – Means a stationary source that obtains a federally enforceable physical or operational limitation from the Department to limit or cap the stationary source’s potential to emit to avoid being defined as a major source as defined by applicable federal and state regulations.

~~22.~~(22) Continuous Emission Monitoring System or CEMS – Means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

~~23.~~(23) Continuous Program of Physical On-site Construction – Means significant and continuous site preparation work such as major clearing or excavation followed by placement of footings, pilings, and other materials of construction, assembly, or installation of unique facilities or equipment at the site of the source. With respect to a change in the method of operating, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

~~24.~~(24) Crematory Incinerator – Means any incinerator designed and used solely for the burning of human remains or animal remains.

~~25.~~(25) Department – Means the South Carolina Department of Health and Environmental Control.

~~26.~~(26) Dioxins/Furans – Means the combined emissions of tetra- through octa-chlorinated dibenzo-paradioxins and dibenzofurans, as measured by EPA Reference Method 23 (40 ~~Code of Federal Regulations~~ CFR) Part 60, Appendix A).

~~27.~~(27) Emission – Means a release or discharge to the outdoor (ambient) atmosphere of air contaminants, including fugitive emissions.

~~28.~~(28) Emission Data – Means the definition contained in 40 CFR 2.301(a)(2), July 1, 1986, is incorporated by reference.

~~29.~~(29) Emission Limitation (and Emission Standard) – Means a requirement established by the state or by the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

~~30.~~(30) Federally Enforceable – Means all limitations and conditions which are enforceable by the Administrator and citizens under the Act, including those requirements developed pursuant to 40 CFR Parts 60, 61, 63, and 70; requirements within the South Carolina State Implementation Plan (SIP); and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

~~31.~~(31) Fuel Burning Operation – Means use of a furnace, boiler, device, or mechanism used principally, but not exclusively, to burn any fuel for the purpose of indirect heating in which the material being heated is not contacted by and adds no substance to the products of combustion.

~~32.~~(32) Fugitive Dust – Means a type of particulate emission that becomes airborne by forces of wind, man's activity, or both, including, but not limited to, construction sites, tilled land, materials storage piles, and materials handling.

~~33.~~(33) Fugitive Emissions – Means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~34.~~(34) Garbage – Means animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

~~35.~~(35) Hazardous Air Pollutant (HAP) – Means a pollutant which is the subject of National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by the EPA by publication in the Federal Register.

~~36.~~(36) Hazardous Waste – Means any waste identified as such by Regulation 61-79.

~~37.~~(37) Hazardous Waste Fuel – Means hazardous waste that has a heat value greater than 5000 British thermal unit per pound (Btu/lb) and is burned in an industrial or utility boiler or industrial furnace for energy recovery, except for hazardous wastes exempted by Section 266.30(b) of Regulation 61-79.

~~38.~~(38) Hazardous Waste Incinerator – Means an incinerator whose primary function is to combust hazardous waste, except for devices which have qualified for exemption as provided in Sections 264.340(b) or 265.340(b) of Regulation 61-79.

~~39.~~(39) Hospital – Means any facility which has an organized medical staff, maintains at least six (6) inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of twenty-four (24) hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

~~40.~~(40) Hospital/Medical/Infectious Waste Incinerator or HMIWI or HMIWI Unit – Means any device that combusts any amount of hospital waste and/or medical/infectious waste.

~~41.~~(41) Hospital Waste – Means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

~~42.~~(42) Incinerator – Means any engineered device used in the process of controlled combustion of waste for the purpose of reducing the volume; removing the contamination and/or reducing or removing the hazardous potential of the waste charged by destroying combustible matter leaving the noncombustible ashes, material, and/or residue; and which does not meet the criteria nor classification as a boiler nor is listed as an industrial furnace.

~~43.~~(43) Industrial Boiler – Means a boiler that produces steam, heated air, or other heated fluids for use in a manufacturing process.

~~44.~~(44) Industrial Furnace – Means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

~~a.~~(a) Cement kilns

~~b.~~(b) Lime kilns

~~e.~~(c) Aggregate kilns

~~d.~~(d) Phosphate kilns

~~e.~~(e) Coke ovens

~~f.~~(f) Blast furnaces

~~g.~~(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as tray furnaces, cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces)

~~h.~~(h) Titanium dioxide chloride process oxidation reactors

~~i.~~(i) Methane reforming furnaces

~~j.~~(j) Pulping liquor recovery furnaces

~~k.~~(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid

~~1~~(1) Such other devices as the Department may determine on a case-by-case basis using one (1) or more of the following factors:

~~i~~(i) The design and use of the device primarily to accomplish recovery of material products;

~~ii~~(ii) The use of the device to burn or reduce raw materials to make a material product;

~~iii~~(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

~~iv~~(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

~~v~~(v) The use of the device in common industrial practice to produce a material product; and

~~vi~~(vi) Other factors as appropriate.

~~45~~(45) Industrial Incinerator – Means any incinerator utilized in an industrial plant that does not meet the definition for any other type of incinerator or an incinerator used to combust Type 5 or 6 waste at any site.

~~46~~(46) In Existence – Means that the owner or operator has obtained all necessary construction permits required by this Department and either has:

~~a~~(a) Begun, or caused to begin, a continuous program of physical on-site construction of the source; or

~~b~~(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time, or that the owner or operator possesses a valid operating permit for the source prior to the effective date of a regulation or standard.

~~47~~(47) Kraft Pulp Mill – Means any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at a high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.

~~48~~(48) Major Source – Means, except as otherwise provided, any source which directly emits, or has the potential to emit, greater than or equal to the major source threshold as defined by applicable federal and state regulations.

~~49~~(49) Malfunction – Means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction, the operator shall operate within established parameters as much as possible, and monitoring of all applicable operating parameters shall continue until all waste has been combusted or until the malfunction ceases, whichever comes first.

~~50~~(50) Mass Emission Rate – Means the weight discharged per unit of time.

~~51-~~(51) Medical/Infectious Waste – Means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals listed below; and any waste defined as infectious waste in Regulation 61-105, Infectious Waste Management. The definition of medical/infectious waste does not include hazardous waste identified or listed in Regulation 61-79.261; household waste, as defined in Regulation 61-79.261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in Regulation 61-79.261.4(a)(1).

~~a-~~(a) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

~~b-~~(b) Human pathological waste – tissues, organs, body parts, and body fluids that are removed during surgery or autopsy or other medical procedures, and specimens of body fluids and their containers.

~~c-~~(c) Human blood and blood products including:

~~i-~~(i) Liquid waste human blood;

~~ii-~~(ii) Products of blood;

~~iii-~~(iii) Items saturated and/or dripping with human blood; or

~~iv-~~(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers which were used or intended for use in either patient care, testing and laboratory analysis, or the development of pharmaceuticals. Intravenous bags are also included in this category.

~~d-~~(d) Sharps – instruments used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

~~e-~~(e) Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.

~~f-~~(f) Isolation wastes – biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases or isolated animals known to be infected with highly communicable diseases.

~~g-~~(g) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

~~52-~~(52) Multiple-Chamber Incinerator – Means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, interconnected by gas passage ports or ducts.

~~53.~~(53) Municipal Solid Waste, MSW, or Municipal-type Solid Waste – ~~a.~~(a) Means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional wastes include:

~~i.~~(i) Yard waste;

~~ii.~~(ii) Refuse-derived fuel; and

~~iii.~~(iii) Motor vehicle maintenance materials limited to vehicle batteries and tires.

~~b.~~(b) Household, commercial/retail, and institutional waste (MSW) does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes, but is not limited to, railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes (including Type 5 or 6 waste); medical waste; radioactive contaminated waste; hazardous waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

54.(54) Municipal Waste Combustor, MWC, or Municipal Waste Combustor Unit – Means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (for example, steam generating units) and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired, etc.), air curtain incinerators, and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units. Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems. For the purpose of determining reconstruction or modification, as defined in 40 CFR Part 60 Subpart A, or Regulation 62.5, Standard No. 3, to a municipal waste combustor, the following applies:

~~a.~~(a) The boundaries of a municipal solid waste combustor are defined as follows. The municipal waste combustor unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The municipal waste combustor boundary starts at the municipal solid waste pit or hopper and extends through:

~~i.~~(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

~~ii.~~(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfers the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

~~iii.~~(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

~~b.~~(b) The municipal waste combustor unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set.

~~55.~~(55) NAICS Code – Means North American Industry Classification System (NAICS) Code, a six (6) digit coding system, which attempts to classify all business establishments by the types of products or services they provide.

~~56.~~(56) Non-Industrial Boiler – Means any boiler not classified as an industrial boiler.

~~57.~~(57) Non-Industrial Furnace – Means any furnace not classified as an industrial furnace.

~~58.~~(58) Non-Spec. Oil (Off-Spec. Oil) – See definition of used oil.

~~59.~~(59) Opacity – Means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~60.~~(60) Open Burning – Means any fire or smoke-producing process which is not conducted in any boiler plant, furnace, high temperature processing unit, incinerator or flare, or in any other such equipment primarily designed for the combustion of fuel or waste material.

~~61.~~(61) Part 70 Permit – Means any permit or group of permits covering a source subject to the permitting requirements of Regulation 61-62.70. The use of the term “Title V Permit” shall be construed to mean “Part 70 Permit.”

~~62.~~(62) Particulate Matter – Means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions.

~~63.~~(63) Particulate Matter Emissions – Means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method described in 40 CFR Part 60, July 1, 1987, or an equivalent or alternative method approved by the Department, with the concurrence of the EPA.

~~64.~~(64) Pathological Waste – Means waste material consisting of only human or animal remains, anatomical parts, and/or tissue; the bags/containers used to collect and transport the waste material; and animal bedding (if applicable).

~~65.~~(65) Plant – Means, except as otherwise provided, any stationary source or combination of stationary sources, which is located on one (1) or more contiguous or adjacent properties and owned or operated by the same person(s) under common control.

~~66.~~(66) Plastics/Rubber Recycling Unit – Means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than seventy (70) percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste; and may include manufacturing scraps, trimmings, off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

~~67.~~(67) PM_{2.5} – Means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~68.~~(68) PM_{2.5} Emissions – Means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method approved by the Department with concurrence of the EPA.

~~69.~~(69) PM₁₀ – Means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~70.~~(70) PM₁₀ Emissions – Means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by a reference method approved by the Department with concurrence of the EPA.

~~71.~~(71) Potential to Emit – Means the maximum capacity of a source to emit a regulated pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated 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 treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

~~72.~~(72) Process Industry – Means any source engaged in the manufacture, processing, handling, treatment, forming, storing, or any other action upon materials except fuel-burning operations.

~~73.~~(73) Process Weight – Means the total weight of all materials introduced into a source operation, including air and water where these materials become an integral part of the product and solids used as fuels, but excluding liquids and gases used solely as fuels.

~~74.~~(74) Process Weight Rate – ~~a.~~(a) Means a rate established as follows:

~~i.~~(i) For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

~~ii.~~(ii) For cyclical or batch unit operations or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

~~b.~~(b) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

~~75.~~(75) Pyrolysis/Combustion Unit – Means a unit that produces gases, liquids, or solids through the heating of waste; and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

~~76.~~(76) Refuse – Means garbage, rubbish, and/or trade waste.

~~77.~~(77) Refuse-derived Fuel – Means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

~~78.~~(78) Retail Business Type Incinerator – Means an incinerator that combusts waste typical of a retail business rather than domestic, commercial, or industrial activities.

~~79.~~(79) Rubbish – Means solid wastes from residences and dwellings, commercial establishments, and institutions.

~~80.~~(80) Salvage Operations – Means any operation of a business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material including, but not limited to, metals, chemicals, shipping containers, drums, or automobiles.

~~81.~~(81) Secondary Emissions – Means emissions which would occur as a result of the construction or operation of a major source or major modification but do not come from the major source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

~~a.~~(a) Emissions from ships or trains moving to or from the new or modified source.

~~b.~~(b) Emissions from any offsite support operation which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or major modification.

~~82.~~(82) SIC Code – Means Standard Industrial Classification Codes which are four digit numerical codes designed by the U.S. Department of Labor in order to create uniform descriptions of business establishments.

~~83.~~(83) Sludge Incinerator – Means an incinerator that combusts wastes containing more than ten (10) percent (dry weight basis) sludge produced by municipal or industrial wastewater treatment plants or each incinerator that charges more than 2205 pounds per day (lb/day) (dry weight basis) of sludge produced by municipal or industrial wastewater treatment plants.

~~84.~~(84) Smoke – Means small gasborne and airborne particles arising from a process of combustion in sufficient number to be observable by a person of normal vision under normal conditions.

~~85.~~(85) Solid Fuel – Means a fuel which is fired as a solid such as coal, lignite, and wood.

~~86.~~(86) Spec. Oil – See definition of used oil.

~~87.~~(87) Stack – Means any flue, conduit, chimney, or opening arranged to conduct an effluent into the open air.

~~88.~~(88) Stack Height – Means the vertical distance measured in feet between the point of discharge from the stack or chimney into the outdoor atmosphere and the elevation of the land thereunder.

~~89.~~(89) Standard Conditions – Means 760 millimeters of mercury (mmHg) at twenty-five (25) degrees Centigrade (C).

~~90.~~(90) Stationary Source – Means any building, structure, installation, or process which emits or may emit an air pollutant subject to regulation by any national or state standard. Use of the term “source” is to be construed to mean “stationary source.”

~~91.~~(91) Substantial Loss – Means, generally, a loss which would equal or exceed ten (10) percent of the total initial project cost.

~~92.~~(92) Synthetic Minor Source – Means a stationary source that obtains a federally enforceable physical or operational limitation from the Department to limit or cap the stationary source’s potential to emit to avoid being defined as a major source or major modification, as defined by applicable federal and state regulations.

~~93.~~(93) Total Reduced Sulfur (TRS) – Means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide that are released during the kraft pulping operation.

~~94.~~(94) Total Suspended Particulate (TSP) – Means particulate matter as measured by the method described in Appendix B, 40 CFR Part 50, July 1, 1987.

~~95.~~(95) Trade Waste – Means all solid, liquid, or gaseous material or rubbish resulting from construction, building operations, or the prosecution of any business, trade, or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, and cinders.

~~96.~~(96) Untreated Lumber – Means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or “pressure-treated.” Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

~~97.~~(97) Used Oil – Means any oil that has been refined from crude or synthetic oil and as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and may be economically recyclable. This also includes absorbent material contaminated with used oil such as oily rags or absorbent blankets. Two (2) types of used oil are defined as follows:

~~a.~~(a) Spec. Oil (Specification Oil) – Used oil that meets the following specifications: *

~~i.~~(i) Arsenic – 5 parts per million (ppm) maximum;

~~ii.~~(ii) Cadmium – 2 ppm maximum;

~~iii.~~(iii) Chromium – 10 ppm maximum;

~~iv.~~(iv) Lead – 100 ppm maximum;

~~v.~~ Nickel —120 ppm maximum;

~~vi.~~(v) Total halogens – 4000 ppm maximum; and**

~~vii.~~(vi) Flash Point – 100 degrees Fahrenheit (F) (37.8 degrees C) minimum.

* This specification does not apply to used oil fuel mixed with a hazardous waste.

** Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste. The burden of proof that this is not true rests with the user.

~~b.(b)~~ Non-Spec. Oil (Off-Spec. Oil) – Used oil that does not meet the specification above.

~~98.(98)~~ Utility Boiler – Means a boiler that produces steam, heated air, or other heated fluids for sale or for use in producing electric power for sale.

~~99.(99)~~ Virgin Fuel – Means unused solid, liquid, or gaseous commercial fuel, and clean wood or bark that has not been processed other than for size reduction excluding clean wood or bark burned in an air curtain incinerator.

~~100.(100)~~ Volatile Organic Compound (VOC) – ~~a.(a)~~ Means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method (as specified in 40 CFR Part 60, as of July 1, 1990), an equivalent method, an alternative method, or which is determined by procedures specified under any subpart of 40 CFR Part 60. This definition does not include compounds that have negligible photochemical reactivity according to the methods employed by the EPA to determine compounds listed in 40 CFR 51.100(s).

~~b.(b)~~ For purposes of determining compliance with emission limits, VOCs will be measured by the approved test methods. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

~~101.(101)~~ Waste – Means any discarded material including, but not limited to, used oil, hazardous waste fuel, hazardous waste, medical waste, municipal solid waste (MSW), sludge, waste fuel, and waste classification Types 0 through 6 or any material which as a result of use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

~~a.(a)~~ Type 0 – Trash, a mixture of highly combustible waste such as paper, cardboard, wood boxes, and combustible floor sweepings from commercial and industrial activities. The mixture contains up to ten (10) percent by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags, and plastic or rubber scraps.

Typical composition: ten (10) percent moisture, five (5) percent incombustible solids, and has a heating value of approximately 8500 Btu/lb as fired.

~~b.(b)~~ Type 1 – Rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage, and combustible floor sweepings from domestic, commercial, and industrial activities. The mixture contains up to twenty (20) percent by weight of restaurant or cafeteria waste, but contains little or no treated paper, plastic, or rubber wastes.

Typical composition: twenty-five (25) percent moisture, ten (10) percent incombustible solids, and has a heating value of approximately 6500 Btu/lb as fired.

~~e.(c)~~ Type 2 – Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy.

Typical composition: up to fifty (50) percent moisture, seven (7) percent incombustible solids, and has a heating value of approximately 4300 Btu/lb as fired.

~~d~~(d) Type 3 – Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets, and like installations.

Typical composition: up to seventy (70) percent moisture, up to five (5) percent incombustible solids, and has a heating value of approximately 2500 Btu/lb as fired.

~~e~~(e) Type 4 – Human and animal remains, consisting of carcasses, organs, and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources.

Typical composition: up to eighty-five (85) percent moisture, five (5) percent incombustible solids, and having a heating value of approximately 1000 Btu/lb as fired.

~~f~~(f) Type 5 – By-product waste, gaseous, liquid, or semi-liquid, such as tar, paints, solvents, sludge, fumes, etc., from industrial operations. Btu values shall be determined by the individual materials to be destroyed.

~~g~~(g) Type 6 – Solid by-product waste, such as rubber, plastics, wood waste, etc., from industrial operations. Btu values shall be determined by the individual materials to be destroyed.

~~102~~(102) Waste Fuel – Means waste that does not meet hazardous waste criteria but has a heat value greater than 5000 Btu /lb.

~~103~~(103) Yard Waste – Means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of MSW in this section. Yard waste does not include clean wood, which is also exempt from the definition of MSW in this section.

SECTION II – PERMIT REQUIREMENTS

The following regulation will not supersede any state or federal requirements nor special permit conditions, unless this regulation would impose a more restrictive emission limit. The owner or operator shall comply with all terms, conditions, and limitations of any Department-issued permit for sources or activities at the owner or operator's facility. A source's permit status may change upon promulgation of new regulatory requirements.

~~A~~(A) Construction Permits

~~1~~(1) Applicability

~~a~~(a) Except as allowed under Section II.~~A.1.b~~(A)(1)(b) and ~~A.1.e~~(A)(1)(c) below, 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.

~~b~~-(b) The Department may grant permission to proceed with minor alterations or additions without issuance of a construction permit when the Department determines that the alteration or addition will not increase the quantity and will not alter the character of the source's emissions.

~~e~~-(c) The owners or operators of sources not requesting to use federally enforceable construction permit conditions to limit potential to emit, sources not subject to regulations with more stringent start of construction limitations, or sources not otherwise exempt from permit requirements, may undertake the following on-site activities prior to obtaining a construction permit:

- ~~i~~-(i) Planning;
- ~~ii~~-(ii) Engineering and design;
- ~~iii~~-(iii) Geotechnical investigation;
- ~~iv~~-(iv) Site land clearing and grading;
- ~~v~~-(v) Setting up temporary trailers to house construction staff and contractor personnel;
- ~~vi~~-(vi) Ordering of equipment and materials;
- ~~vii~~-(vii) Receipt and storing of equipment;
- ~~viii~~-(viii) Pouring of the foundation up to and including the mounting pads and slab on grade;
- ~~ix~~-(ix) Relocation of utilities;
- ~~x~~-(x) For existing sources, relocation/installation of piping, electrical service, and instrumentation;
- ~~xi~~-(xi) Temporary power for the site (such as power lines);
- ~~xii~~-(xii) Site drainage including ditches and culverts;
- ~~xiii~~-(xiii) Temporary dewatering activities associated with the excavations;
- ~~xiv~~-(xiv) Temporary gravel (Right Out of Crusher (ROC)) road beds for the site;
- ~~xv~~-(xv) Soil only excavations;
- ~~xvi~~-(xvi) Temporary telecommunications for the site (such as telephone and internet); and
- ~~xvii~~-(xvii) Security fencing related to the storage of equipment and materials.

~~d~~-(d) In the event that the source does not qualify for issuance of a construction permit, the owners or operators accept the financial risk of commencing the activities listed in Section ~~II.A.1.e.i(A)(1)(c)(i)~~ through ~~A.1.e.xvii(A)(1)(c)(xvii)~~ above.

~~2~~-(2) No permit to construct or modify a source will be issued if emissions interfere with attainment or maintenance of any state or federal standard.

~~3~~-(3) The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date, and written notification of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date.

~~4~~-(4) Approval to construct shall become invalid if construction:

- ~~a~~-(a) Is not commenced within eighteen (18) months after receipt of such approval;
- ~~b~~-(b) Is discontinued for a period of eighteen (18) months or more; or
- ~~e~~-(c) Is not completed within a reasonable time as deemed by the Department.

~~5~~-(5) The Department may extend the construction permit for an additional 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

~~B-(B)~~ Exemptions from the Requirement to Obtain a Construction Permit

~~1-(1)~~ No construction permits shall be required for the sources listed in Section II-~~B-1-a(B)(1)(a)~~ through ~~B-1-e(B)(1)(c)~~ below, which burn virgin fuel and which were constructed prior to February 11, 1971, and which are not located at a facility that meets the definition of a major source as defined in Regulation 61-62.70.2(r); however, modifications at these facilities may trigger the requirement to obtain a construction permit.

~~a-(a)~~ Natural gas boilers.

~~b-(b)~~ Oil-fired boilers of 50 ~~×10⁶~~ million British thermal unit per hour (Btu/hr) rated input capacity or smaller.

~~e-(c)~~ Coal-fired boilers of 20 ~~×10⁶~~ million Btu/hr rated input capacity or smaller.

~~2-(2)~~ No construction permits shall be required for the sources listed in Section II-~~B-2-a(B)(2)(a)~~ through ~~B-2-h(B)(2)(h)~~ below, unless otherwise specified by Regulation 61-62.70 or any other state or federal requirement. A source's exemption status may change upon the promulgation of new regulatory requirements applicable to any of the sources listed in Section II-~~B-2-a(B)(2)(a)~~ through ~~B-2-g(B)(2)(g)~~, or to any other sources that have been determined to have total uncontrolled emissions less than the thresholds in Section II-~~B-2-h(B)(2)(h)~~, or to any similar sources that have been granted an exemption by the Department.

~~a-(a)~~ Boilers and space heaters of less than 1.5 ~~×10⁶~~ million Btu/hr rated input capacity which burn only virgin liquid fuels or virgin solid fuels.

~~b-(b)~~ Boilers and space heaters of less than 10 ~~×10⁶~~ million Btu/hr rated input capacity which burn only virgin gas fuels.

~~e-(c)~~ Comfort air-conditioning or ventilation systems.

~~d-(d)~~ Motor vehicles.

~~e-(e)~~ Laboratory hoods.

~~f-(f)~~ Emergency power generators as described below:

~~i-(i)~~ Generators of less than or equal to 150 kilowatt (kW) rated capacity.

~~ii-(ii)~~ Generators of greater than 150 kW rated capacity designated for emergency use only and are operated a total of 500 hours per year or less for testing and maintenance and have a method to record the actual hours of use such as an hour meter.

~~g-(g)~~ Sources emitting only steam, air, nitrogen, oxygen, carbon dioxide, or any physical combination of these.

~~h-(h)~~ Sources with a total uncontrolled potential to emit (PTE) of less than five (5) tons per year each of particulates, sulfur dioxide, nitrogen oxides, and carbon monoxide; and a total uncontrolled PTE of less than 1000 pounds per month (lbs/month) of VOCs will not require construction permits. Unless otherwise exempt, sources may be exempted under this section at higher emission levels if there is a demonstration that there are no applicable limits or requirements. These applicable requirements include federally

applicable limits or requirements. However, these sources may be required to be included in any subsequent construction or operating permit review to ensure that there is no cause or contribution to an exceedance of any ambient air quality standard or limit. For toxic air pollutant exemptions, refer to Regulation 61-62.5, Standard No. 8. Emissions calculations and any other information necessary to document qualification for this exemption must be maintained onsite and provided to the Department upon request.

~~3.~~(3) The Department will place the exempt sources listed in Section II.~~B.2.a~~(B)(2)(a) through ~~B.2.g~~(B)(2)(g) above, and other sources that have been determined will not interfere with the attainment or maintenance of any state or federal standard, on a list of sources to be exempted without further review. The Department may develop emission thresholds for exemption that have been determined will not interfere with the attainment or maintenance of any state or federal standard, to be maintained with the list of sources to be exempted without further review. This list of sources and source emission thresholds that are exempt without further review from the requirement to obtain a construction permit will be maintained by the Department and periodically published in the South Carolina State Register for use by the public and the regulated community. Requests to the Department may be made to add sources to the list.

~~4.~~(4) Sources with only fugitive emissions must submit source information, and the need for permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but will not be limited to, the nature and amount of the pollutants, location, proximity to residences and commercial establishments, etc.

~~5.~~(5) Sources of VOCs greater than 1000 lbs/month may not require a permit. This determination will take into consideration, but will not be limited to, applicability to state and federal requirements. No waiver will be permissible if federal requirements apply unless otherwise exempt. Emissions calculations and any other information necessary to document qualification for this exemption and the need for permit(s) will be made by the Department on a case-by-case basis. Exempt sources of VOCs may be required to be included in any subsequent construction or operating permit review to ensure that there is no cause or contribution to an exceedance of any ambient air quality standard or limit.

~~6.~~(6) Requests for exemption from the requirement to obtain a construction permit, for new sources similar to sources already on the Department maintained list established in Section II.~~B.3~~(B)(3) above, or for modifications to existing equipment, including the reconstruction, relocation, and replacement of existing equipment, which may qualify for exemption as per Section II.~~B.2.h~~(B)(2)(h) and Section II.~~B.4~~(B)(4) above, shall include the following information:

~~a.~~(a) A complete description of the existing equipment and proposed modification;

~~b.~~(b) The pollutant(s) being emitted and any deviation from the parameters provided in earlier permit applications, permit exemptions, and issued permits;

~~e.~~(c) Any ambient air quality demonstrations needed for Regulation 61-62.5, Standards No. 2, No. 7, and No. 8; and

~~d.~~(d) A regulatory review to demonstrate the project is not a CAA Title I modification nor subject to Regulation 61-62.5, Standards No. 7 and No. 7.1.

~~7.~~(7) The construction permitting exemptions in Section II.~~B~~(B) do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. The Department reserves the right to require a construction permit, and the need for permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but will not be limited to, the nature and amount of the pollutants, location, proximity to residences and commercial establishments, etc.

C(C) Construction Permit Applications

~~1~~(1) Construction permit applications shall be reviewed, ~~and signed, and sealed~~ by a professional engineer registered to practice in the State of South Carolina (except professional engineers employed by the federal government preparing applications for the federal government or other professional engineers exempted from the state registration requirements).

~~2~~(2) The following are exempt from the requirement that the construction permit applications be reviewed, ~~and signed, and sealed~~ by a registered professional engineer provided the proposed unit is identical to a prototype model which has been previously designed or otherwise certified by a professional engineer:

~~a~~(a) Package-type incinerators of 750 lb/hr rated capacity or smaller which burn Types 0 and 1 wastes as defined by the Incinerator Institute of America;

~~b~~(b) Package-type incinerators of 500 lb/hr rated capacity or smaller which burn animal remains excluding those remains that are considered infectious waste; ~~and~~

~~c~~(c) Package-type boilers of 100 ~~x~~10⁶ million Btu/hr input capacity or smaller which burn natural gas or virgin oil as fuel; ~~and~~

~~d~~(d) Package-type concrete batch plants that are designed to be hauled to a site, set up, and broken down quickly, with little to no additional equipment needed to manufacture product.

~~3~~(3) Construction permit applications shall provide the information described in Section II-~~C~~3-a (C)(3)(a) through ~~C~~3-p(C)(3)(r). This information should be submitted on Department forms, but project specific information may need to be provided in addition to that requested in applicable forms.

~~a~~(a) The facility name ~~and the name, mailing address, and telephone number of the owner or operator for the facility;~~ (the name used to identify the facility at the location requesting the permit);

~~b~~(b) The location of the facility including its street address ~~and the name, mailing address, and telephone number of the facility's contact person;~~

~~c~~(c) The name, mailing address, e-mail address, and telephone number of the owner or operator for the facility;

~~d~~(d) The name, mailing address, e-mail address, and telephone number of the facility's air permit contact person;

~~e~~(e) The facility's Federal Employer Identification Number or Federal Tax ID Number;

~~f~~(f) A description and the U. S. Standard Industrial Classification (SIC) Code and North American Industry Classification System (NAICS) Code of the products or product lines to be produced by the proposed sources covered by this application;

~~e~~(g) The facility's planned operating schedules;

~~f~~-(h) A description of the facility's proposed new or altered processes, including the physical and chemical properties and feed rate of the materials used and produced (in pounds per hour), from which the facility determined potential emissions;

~~g~~-(i) A process flow diagram/production process layout of all new or altered sources showing the flow of materials and intermediate and final products. The process flow diagram/production process layout must identify all equipment, machines, and process steps or product lines within the production process; all product streams; all exhaust streams (emission points) including fugitive within the production process; all waste streams; and all control devices including inherent process control devices used within the production process;

~~h~~-(j) A detailed description of each proposed or existing source that is being altered, including the size and type along with the make and model of the source and any associated air pollution control equipment;

~~i~~-(k) A description, including physical and chemical properties and the Chemical Abstract Service (CAS) number (if applicable), of all emissions from each proposed source or existing source that is being altered. Mass emission data and emission calculations, including the potential uncontrolled and controlled mass emission rate of each criteria pollutant and other air contaminants such as VOCs, toxic air pollutants (TAPs), and HAPs, that will be emitted from each source covered by the application. Emission calculations must be based on proper documentation that supports the basis of the emission rates such as stack test data, AP-42 emission factors, material balance, and/or engineering estimates. All assumptions used in the emission calculations must be provided. Fugitive emissions (for example, emissions from filling operations, pumps, valves, flanges, etc.) must be included in the emission calculations;

~~j~~-(l) A description of all air pollution control devices or systems on the new or altered sources, whether inherent or add-on. The description shall include, but not be limited to, the manufacturer specifications and ratings, the engineering design and operating characteristics, the projected capture and destruction, the control or removal efficiencies at expected contaminant loading levels, and the monitoring data collection and recordkeeping necessary to ensure proper operation of the air pollution control devices;

~~k~~-(m) Source information and calculations to demonstrate compliance with "Good Engineering Practice Stack Height" rules;

~~l~~-(n) A description of each stack or vent related to the proposed and/or existing source(s), including the minimum anticipated height above ground, maximum anticipated internal dimensions, discharge orientation, exhaust volume flow rate, exhaust gas temperature, and rain protection device, if any;

~~m~~-(o) Scale drawings showing a plan view of the property lines, the location of the source, all stacks, and other emission points related to the source, as well as buildings that might affect dispersion of any emissions;

~~n~~-(p) An air dispersion modeling analysis or other information demonstrating that emissions from the facility, including those in the application, will not interfere with the attainment or maintenance of any ambient air quality standard;

~~o~~-(q) A summary of facility-wide potential uncontrolled and controlled emissions with a regulatory applicability determination; and

~~p~~-(r) Other information as may be necessary for proper evaluation of the source as determined by the Department.

~~D~~-(D) General Construction Permits

~~1~~-(1) The Department may develop and issue general construction permits applicable to similar sources for new construction projects or minor modifications to existing sources.

~~2~~-(2) ~~Any~~ ~~G~~general construction permits shall incorporate all requirements applicable to the construction of similar sources and shall identify criteria by which sources may qualify for coverage under a general construction permit.

~~3~~-(3) Coverage under a General Construction Permit

(a) Sources may submit a construction permit application to the Department with a request for coverage under the conditions and terms of a general construction permit for similar sources. The Department shall grant a general construction permit to sources certifying qualification for and agreeing to the conditions and terms of a general construction permit for similar sources.

(b) A source that has submitted an individual construction permit application to the Department and has not requested coverage under the conditions and terms of a general construction permit for similar sources, but which is determined to qualify for coverage under a general construction permit, may be granted coverage under the general construction permit at the sole discretion of the Department.

~~4~~-(4) ~~A~~ ~~S~~sources shall be subject to enforcement action for operation without a valid permit if ~~a~~ the source is later determined not to qualify for coverage under a general construction permit.

~~5~~-(5) The Department may grant a source's ~~request for~~ authorization to operate under a general construction permit, but such a grant shall be a final permit action for purposes of judicial review.

~~6~~-(6) The permit application for general construction permits may deviate from the requirements of Section II-~~C~~-(C) above, provided that such application includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

~~7~~-(7) A source that qualifies for coverage under a Department issued general construction permit may submit a construction permit application to the Department and request an individual construction permit in lieu of coverage under a general construction permit.

~~E~~-(E) Synthetic Minor Construction Permits

~~1~~-(1) General Provisions

~~a~~-(a) Any stationary source may request to use federally enforceable permit conditions to limit the source's potential to emit and become a synthetic minor source.

~~b~~-(b) Stationary sources requesting a synthetic minor construction permit shall submit a complete permit application package to the Department as prescribed by Section II-~~E~~-(5)(E)(5) below.

~~e~~-(c) Stationary sources requesting a synthetic minor construction permit shall undergo the public participation procedures of Section II-~~N~~-(N) below.

~~d~~-(d) The Department shall act, within a reasonable time, on an application for a synthetic minor construction permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

~~e.(e)~~ In the event of a denial of a synthetic minor construction permit application, the Department shall notify the applicant in writing of the reasons for the denial. The Department shall not accept a subsequent synthetic minor construction permit application until the applicant has addressed the concerns specified by the Department which caused the denial. The source shall correct all deficiencies noted by the Department within sixty (60) calendar days of receiving notice of the denial, or submit a complete major source construction permit application, as prescribed by Section II.~~C(C)~~ above, if the source desires to proceed with the project.

~~2.(2)~~ New Sources and Modifications

~~a.(a)~~ A stationary source desiring to restrict its potential to emit shall submit a written request to the Department for a federally enforceable construction permit conditioned to constrain the operation of the source, along with a completed construction permit application package as prescribed by Section II.~~E.5(E)(5)~~ below. The construction of the new or modified source shall not commence until the source has received an effective permit to construct.

~~b.(b)~~ The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date, and written notification of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. A written request to obtain an operating permit shall be submitted to the Department within fifteen (15) days after the actual date of initial startup of each new or altered source in accordance with Section II.~~F(F)~~ below. A satisfactory compliance inspection by a Department representative may precede the issuance of an operating permit for any newly constructed or modified source.

~~3.(3)~~ Synthetic Minor Construction Permit Conditions

~~a.(a)~~ Synthetic minor construction permits shall contain the standard permit conditions listed in Section II.~~J(1)~~ below and any special permit conditions required to verify a source's compliance with the emissions limitations and operational requirements.

~~b.(b)~~ The limitations and requirements listed as permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

~~e.(c)~~ All synthetic minor construction permit conditions that constrain the operation of a source in an effort to limit potential to emit below major source threshold levels shall be federally enforceable. Unless otherwise agreed by the Department and EPA, the Department shall provide to EPA on a timely basis a copy of each proposed (or draft) and final permit intended to be federally enforceable.

~~4.(4)~~ General Synthetic Minor Construction Permits

~~a.(a)~~ The Department may, after notice and opportunity for public participation provided under Section II.~~N(N)~~ below, issue a general synthetic minor construction permit applicable to similar sources.

~~b.(b)~~ Any general synthetic minor construction permit shall incorporate all requirements applicable to the construction of similar synthetic minor sources and shall identify criteria by which sources may qualify for coverage under the a general synthetic minor construction permit.

~~e.(c)~~ Coverage under a General Synthetic Minor Construction Permit

(1) Sources may submit a synthetic minor construction permit application to the Department with a request for coverage under the conditions and terms of a general synthetic minor construction permit for

similar sources. The Department shall grant ~~the~~ a general synthetic minor construction permit to sources certifying qualification for and agreeing to the conditions and terms of ~~the~~ a general synthetic minor construction permit for similar sources.

(2) A source that has submitted an individual synthetic minor construction permit application and has not requested coverage under the conditions and terms of a general synthetic minor construction permit for similar sources, but which is determined to qualify for coverage under a general synthetic minor construction permit, may be granted coverage under the general synthetic minor construction permit at the sole discretion of the Department.

~~d.(d)~~ The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for ~~the conditions and terms of the~~ coverage under a general synthetic minor construction permit.

~~e.(e)~~ The Department may grant a source authorization to operate under a general synthetic minor construction permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review.

~~f.(f)~~ The Department shall provide timely notice to the public of any authorization given to a facility to operate under the terms of a general synthetic minor construction permit. Such notice may be made on a periodic, summarized basis covering all facilities receiving authorization since the last notice.

(g) A source that qualifies for coverage under a Department issued general synthetic minor construction permit may submit a construction permit application to the Department and request an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor construction permit.

~~5.(5)~~ Requirements for Synthetic Minor Construction Permit Applications

~~a.(a)~~ In addition to the minimum information required by Section II-~~C.3(C)(3)~~ above, any facility applying for a synthetic minor construction permit must also provide the following:

~~i.(i)~~ Potential emission calculations and proposed federally enforceable emission limitations for each emission unit at the facility verifying that the total emissions at the facility will be below the major source (or facility) thresholds;

~~ii.(ii)~~ All proposed production and/or operational limitations that will constrain the operation of each emission unit that are to be identified as federally enforceable; and

~~iii.(iii)~~ All proposed monitoring parameters, recordkeeping, and reporting requirements the applicant will use to determine and verify compliance with the requested federally enforceable limitations on a continuous basis. The applicant shall also provide the compliance status of these proposed parameters and requirements at the time of the application submittal.

~~b.(b)~~ The permit application for general synthetic minor construction permits may deviate from the requirements of Section II-~~E.5-a(E)(5)(a)~~ provided that such application includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

~~F.(F)~~ Operating Permits

~~4-~~(1) The owner or operator shall submit written notification to the Department of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. Any source that is required to obtain an air quality construction permit issued by the Department must obtain an operating permit when the new or altered source is placed into operation and shall comply with the requirements of this section.

(2) When a Department issued construction permit includes only emission limits, monitoring, reporting, and/or other requirements that do not establish engineering or construction specifications for the project, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department.

~~2-~~(3) When a Department issued construction permit includes engineering and/or construction specifications, ~~the~~ owner/operator or professional engineer in charge of the project shall certify that, to the best of his/her knowledge and belief and as a result of periodic observation during construction, the construction under application has been completed in accordance with the specifications agreed upon in the construction permit issued by the Department. If construction is certified as provided above, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department. If construction is not built as specified in the permit application and associated construction permit(s), the owner/operator must submit to the Department a complete description of modifications that are at variance with the documentation of the construction permitting determination prior to commencing operation. Construction variances that would trigger additional requirements that have not been addressed prior to start of operation shall be considered construction without a permit.

~~3-~~(4) Request for a New or Revised Operating Permit

~~a-~~(a) For sources covered by an effective Title V operating permit, the modification request required by Regulation 61-62.70 shall serve as the request to operate for the purposes of this regulation.

~~b-~~(b) For sources not subject to Regulation 61-62.70, or not yet covered by an effective Title V operating permit, the owner or operator shall submit a written request for a new or revised operating permit to cover any new, or altered source, postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source.

~~e-~~(c) The written request for a new or revised operating permit must include, at a minimum, the following information:

~~i-~~(i) A list of sources that were placed into operation; and

~~ii-~~(ii) The actual date of initial startup of each new or altered source.

~~5-~~(5) General Operating Permits

(a) The Department may develop and issue a general operating permit applicable to similar sources.

(b) Any general operating permit shall incorporate all requirements applicable to the operation of similar sources and shall identify criteria by which sources may qualify for coverage under a general operating permit.

(c) Coverage under a General Operating Permit

(1) Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a general operating permit for similar sources. The Department shall grant a general operating permit to a source certifying qualification for and agreeing to the conditions and terms of a general operating permit for similar sources.

(2) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general operating permit for similar sources, but which is determined to qualify for coverage under a general operating permit, may be granted coverage under the general operating permit at the sole discretion of the Department.

(d) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a general operating permit.

(e) The Department may grant a source authorization to operate under a general operating permit, but such a grant shall be a final permit action for purposes of judicial review.

(f) A source that qualifies for coverage under a Department issued general operating permit may submit an operating permit application to the Department and request an individual operating permit in lieu of coverage under a general operating permit.

~~G.(G)~~ Conditional Major Operating Permits

~~1.(1)~~ The requirements of Section II.~~G.(G)~~ shall apply to those sources that request a federally enforceable permit to limit their potential to emit to less than major source thresholds.

~~2.(2)~~ General Provisions

~~a.(a)~~ Any stationary source that satisfies the definition of a major source may request a federally enforceable conditional major operating permit to limit the source's potential to emit and become a conditional major source. Any stationary source that has received a synthetic minor construction permit to limit the source's potential to emit below major source threshold levels, that is not required to obtain a Title V operating permit, shall be issued a conditional major operating permit to consolidate the source's limitations on potential to emit and shall be considered a conditional major source.

~~b.(b)~~ Stationary sources requesting a conditional major operating permit shall submit a complete request for a new or revised operating permit to the Department as required by Section II.~~G.6(G)(6)~~ below.

~~c.(c)~~ Stationary sources requesting an original conditional major operating permit shall undergo the public participation procedures of Section II.~~N(N)~~ below.

~~d.~~ ~~Submission of a request for renewal meeting the requirements in Section II.H below, shall allow the owner or operator to continue operating pursuant to the most recent conditional major operating permit until such time as the Department has taken final action on the request for renewal.~~

~~e.(d)~~ The Department shall act on a request for a conditional major operating permit and shall notify the source in writing of its approval, conditional approval, or denial.

~~f.(e)~~ In the event of a denial of a conditional major operating permit request, the Department shall notify the source in writing of the reasons for the denial. The Department shall not accept a subsequent conditional major operating permit request until the source has addressed the concerns specified by the Department which caused the original denial. The source shall correct all deficiencies noted by the

Department or submit a complete permit application in accordance with Regulation 61-62.70 in order to receive a Title V operating permit.

3.(3) Existing Sources

a.(a) Any owner or operator desiring to be permitted as a conditional major source shall submit an operating permit request containing the information identified in Section II-~~G.6(G)(6)~~ below. A federally enforceable conditional major operating permit shall constrain the operations of the source such that potential emissions fall below applicable regulatory levels and therefore exclude the source from the requirements to have a Title V operating permit.

b.(b) A request for a conditional major operating permit shall not relieve a source from the requirement to meet the deadline for submittal of a Title V operating permit application.

4.(4) New or Modified Sources

a.(a) Any owner or operator who plans to construct, alter, or add to a source of air contaminants, including the installation of any device for the control of air contaminant discharges, and desires a conditional major operating permit shall provide a written request to the Department for a federally enforceable synthetic minor construction permit conditioned to constrain the operation of the source, along with a complete construction permit application package containing the information identified in Section II-~~G.6(G)(6)~~ below. The construction of the new or modified source shall not commence until the source has received an effective permit to construct from the Department.

b.(b) A written request to obtain a conditional major operating permit shall be submitted to the Department, postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source. This request shall include any additional information required in Section II-~~G.6(G)(6)~~ below. These facilities will be issued conditional major operating permits without further public notice if no substantive changes to limitations are required. A satisfactory compliance inspection by a Department representative may precede the issuance of an operating permit for any newly constructed or modified source.

5.(5) Conditional Major Operating Permit Conditions

a.(a) Conditional major operating permits shall contain the standard permit conditions listed in Section II-~~J.4(J)(1)~~ below, and any special permit conditions required to verify a source's compliance with the emissions limitations and operational requirements.

b.(b) The limitations and requirements listed as permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

e.(c) All conditional major operating permit conditions that constrain the operation of a source in an effort to limit potential to emit below major source threshold levels as defined in Regulation 61-62.70 shall be federally enforceable. Unless otherwise agreed by the Department and EPA, the Department shall provide to EPA on a timely basis a copy of each proposed (or draft) and final permit intended to be federally enforceable.

6.(6) Additional Requirements for Conditional Major Operating Permit Requests

a.(a) In addition to the minimum information required by Section II-~~C.3(C)(3)~~ above, any facility requesting a conditional major operating permit must also provide the following:

~~i~~(i) Potential emission calculations and proposed federally enforceable emission limitations for each emission unit at the facility verifying that the total emissions at the facility will be below the major source (or facility) thresholds;

~~ii~~(ii) All proposed production and/or operational limitations that will constrain the operation of each emission unit that are to be identified as federally enforceable; and

~~iii~~(iii) All proposed monitoring parameters, recordkeeping, and reporting requirements the source will use to determine and verify compliance with the requested federally enforceable limitations on a continuous basis. The source shall also provide the compliance status of these proposed parameters and requirements at the time of the request submittal.

~~b~~(b) The request for general conditional major operating permits may deviate from the requirements of Section II-G-6(G)(6) provided that such request includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

~~7~~(7) General Conditional Major Operating Permits

~~a~~(a) The Department may, after notice and opportunity for public participation provided under Section II-N(N) below, issue a general conditional major operating permit applicable to similar sources.

~~b~~(b) Any general conditional major operating permit shall incorporate all requirements applicable to the operation of similar conditional major sources and shall identify criteria by which sources may qualify for a general permit.

~~e~~(c) Coverage under a General Conditional Major Operating Permit

(1) Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a general conditional major operating permit for similar sources. The Department shall grant a general conditional major operating permit to sources certifying qualification for and agreeing to the conditions and terms of a general conditional major operating permit for similar sources.

(2) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general conditional major operating permit for similar sources, but which is determined to qualify for coverage under a general conditional major operating permit, may be granted coverage under the general conditional major operating permit at the sole discretion of the Department.

~~d~~(d) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for ~~the conditions and terms of~~ coverage under a general conditional major operating permit.

~~e~~(e) The Department may grant a source's ~~request for~~ authorization to operate under a general conditional major operating permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review.

~~f~~(f) The Department shall provide timely notice to the public of any authorization given to a facility to operate under the terms of a general conditional major operating permit. Such notice may be made on a periodic, summarized basis covering all facilities receiving authorization since the last notice.

(g) A source that qualifies for coverage under a Department issued general conditional major operating permit may submit a permit application to the Department and request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit.

~~H.~~(H) Operating Permit Renewal Requests

(1) Submission of a request for renewal meeting the requirements in Section II(H)(2)-(5) below, shall allow the owner or operator to continue operating pursuant to the most recent operating permit until such time as the Department has taken final action on the request for renewal.

~~1.~~(2) Any source that wishes to have its operating permit renewed must submit a written request to the Department.

~~2.~~(3) The provisions of Section II-~~H(H)~~ shall apply only to those sources not subject to Regulation 61-62.70. For sources covered by an effective Title V operating permit, the operating permit renewal request required by Regulation 61-62.70 shall serve as the request to operate for the purposes of this regulation.

~~3.~~(4) For sources not subject to Regulation 61-62.70, the owner or operator shall submit an operating permit renewal request to the Department within ninety (90) days prior to the operating permit expiration date. The source may be inspected by the Department in order to decide whether to renew the permit. Past records of compliance and future probability of compliance will be considered in making the decision regarding renewal.

~~4.~~(5) Operating permit renewal requests shall include a description of any changes at the facility that have occurred since issuance of the last operating permit that may affect the operating permit or operating permit review. In general, the description shall include any addition, alteration, or removal of sources, including sources exempt from construction permit requirements; addition, alteration, or removal of emission limitations; any changes to monitoring, recordkeeping, or reporting requirements; and any changes or additions to special permit conditions. The following items should be addressed as part of the operating permit renewal request:

~~a.~~(a) The facility name and the name, mailing address, and telephone number of the owner or operator for the facility (the name used to identify the facility at the location requesting the permit);

~~b.~~(b) The location of the facility including its street address and the name, mailing address, and telephone number of the facility's contact person;

(c) The name, mailing address, e-mail address, and telephone number of the owner or operator for the facility;

(d) The name, mailing address, e-mail address, and telephone number of the facility's air permit contact person;

~~e.~~(e) The facility's Federal Employer Identification Number or Federal Tax ID Number;

~~f.~~(f) Any change to the SIC Code or NAICS Codes of the products or product lines;

~~e.~~(g) Any construction permits to be incorporated into the operating permit, either whole or in part, any listed information descriptions that have been removed or decommissioned, and any changes to exempted sources listed in the current operating permit;

~~f.~~(h) Any change to the facility's planned operating schedules or description of the facility's current and/or proposed processes, including the physical and chemical properties and feed rate of the materials used and produced (in lb/hr) from which the facility determined actual and potential emissions;

~~g.~~(i) Any changes to current process flow diagram or production process layout shall be addressed, showing the flow of materials and intermediate and final products. Updated process flow diagram or production process layout must identify major equipment, machines, and process steps or product lines within the production process; all product streams; all exhaust streams (emission points) including fugitive within the production process; all waste streams; and all control devices including inherent process control devices used within the production process;

~~h.~~(j) A description, including the CAS number (if applicable), of all emissions from each source. Mass emission data and emission calculations, including the potential uncontrolled and controlled mass emission rate of each criteria pollutant and other air contaminants such as VOCs, TAPs, and HAPs emitted from each source. Emission calculations must be based on proper documentation that supports the basis of the emission rates such as stack test data, AP-42 emission factors, material balance, and/or engineering estimates. All assumptions used in the emission calculations must be provided. Fugitive emissions (for example, emissions from filling operations, pumps, valves, flanges, etc.) must be included in the emission calculations. A summary of facility-wide potential uncontrolled and controlled emissions with a regulatory applicability determination must be provided. If existing data supplied to the Department remains correct, identify documents referenced to comply with this requirement;

~~i.~~(k) A description of stack, vent, or fugitive emission parameters associated with each non-exempt emission source. For each emission point/source, this information should include, as appropriate, Universal Transverse Mercator or latitude and longitude coordinates of the emission location, the minimum height above ground, maximum internal dimensions of the emission point/vent, discharge orientation, emission exit velocity, emission exit temperature, dimensions describing the volume or area of fugitive emissions, existence of any rain protection device or other impediment to vertical dispersion, etc. If existing data supplied to the Department remains correct, identify the document(s) submitted to comply with this requirement; and

~~j.~~(l) Other information as may be necessary for proper evaluation of the operating permit request.

1.~~(I)~~ Registration Permits

~~1.~~(1) Development of Registration Permits

~~a.~~(a) The Department may develop and issue a registration permits applicable to similar sources.

~~b.~~(b) Any registration permit developed shall ~~specify compliance with~~ incorporate all requirements applicable to the construction and operation of ~~that specific category of stationary similar~~ sources and shall identify criteria by which sources may qualify for coverage under ~~the a~~ registration permit.

~~b.~~(c) Registration permits will be developed only for specific stationary source groups with uncontrolled potential to emit less than the threshold for major source groups, in accordance with Regulation 61-62.70, Title V Operating Permit Program; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review; and where equipment similarities and simplicity remove the need for in depth site-specific review.

~~2.~~(2) Application for Coverage Under a Registration Permit

~~a.~~(a) Coverage under a Registration Permit

~~(1) A source that qualifies may elect to apply.~~ Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a registration permit for similar sources in lieu of a construction and operating permit as provided in Section II-~~A~~(A) and ~~F~~(F) above. The Department shall grant a registration permit to sources certifying qualification for and agreeing to the conditions and terms of the registration permit applicable to similar sources.

~~(2) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a registration permit for similar sources, but which is determined to qualify for a registration permit, may be granted coverage under the registration permit at the sole discretion of the Department.~~

~~b.~~(b) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for ~~the conditions and terms of coverage under a~~ registration permit.

(c) The Department reserves the right to require a construction and/or operating permit; the requirement for a permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but may not be limited to, the nature and amount of the pollutants, location, and proximity to residences and commercial establishments.

~~e.~~(d) The Department may grant a source's request for authorization to operate under a registration permit, but such a grant shall be a final permit action for purposes of judicial review.

(e) A source that qualifies for coverage under a Department issued registration permit may submit a permit application to the Department and request an individual permit in lieu of coverage under a general registration permit.

~~3.~~(3) Registration Permit Conditions

~~a.~~(a) Registration permits shall contain any applicable permit conditions listed in Section II-~~J~~(J) below as the Department finds appropriate.

~~b.~~(b) Registration permits shall contain any applicable special permit conditions required to verify a source's compliance with any emissions limitations and operational requirements.

~~4.~~(4) Any registration permit may be reopened by the Department for cause or to include any new standard or regulation which becomes applicable to a source during the life of the permit.

~~J.~~(J) Permit Conditions

~~1.~~(1) Standard Permit Conditions

All construction and operating permits shall contain the following standard permit conditions.

~~a.~~(a) No applicable law, regulation, or standard will be contravened.

~~b.~~(b) All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction or operating permit may be grounds for permit revocation.

~~e-(c)~~ For sources not required to have continuous emission monitors, any malfunction of air pollution control equipment or system, process upset, or other equipment failure which results in discharges of air contaminants lasting for one (1) hour or more and which are greater than those discharges described for normal operation in the permit application, shall be reported to the Department within twenty-four (24) hours after the beginning of the occurrence and a written report shall be submitted to the Department within thirty (30) days. The written report shall include, at a minimum, the following:

~~i-(i)~~ The identity of the stack and/or emission point where the excess emissions occurred;

~~ii-(ii)~~ The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the excess emissions;

~~iii-(iii)~~ The time and duration of the excess emissions;

~~iv-(iv)~~ The identity of the equipment causing the excess emissions;

~~v-(v)~~ The nature and cause of such excess emissions;

~~vi-(vi)~~ The steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

~~vii-(vii)~~ The steps taken to limit the excess emissions; and

~~viii-(viii)~~ Documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions.

~~d-(d)~~ Sources required to have continuous emission monitors shall submit reports as specified in applicable parts of the permit, law, regulations, or standards.

~~e-(e)~~ Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to enforcement action.

~~f-(f)~~ Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

~~g-(g)~~ A copy of the Department issued construction and/or operating permit must be kept readily available at the facility at all times. The owner or operator shall 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. All records required to demonstrate compliance with the limits established under a permit shall be maintained on site for a period of at least five (5) years from the date the record was generated.

2-(2) Special Permit Conditions

As the Department finds appropriate, permits shall include special permit conditions such as, but not limited to, production limits, operational limits, source performance testing, operation and maintenance requirements, notification requirements, recordkeeping requirements, reporting requirements, and other monitoring as required.

~~a-(a)~~ When special permit conditions contain production or operational limits, the permit shall have monitoring and/or recordkeeping requirements to verify a source's compliance with the limitations.

~~b-(b)~~ When special permit conditions require an add-on air pollution control device to be operated at a specified destruction and removal efficiency level, the permit shall have monitoring and recordkeeping requirements to determine the add-on air pollution control device's performance on a short-term basis.

~~c-(c)~~ The time period over which a permit limitation on production or operation extends will be as short as possible. For the purpose of determining compliance, permit limitations will, in general, not exceed one (1) month and shall not exceed an annual limit with a rolling monthly average or sum.

~~d-(d)~~ An owner or operator of stationary sources that desires or is required to conduct performance tests to verify emissions limitations shall ensure that source tests are conducted in accordance with the provisions of Regulation 61-62.1, Section IV, Source Tests.

~~e-(e)~~ An hourly emission limit shall be sufficient only if the permit condition(s) require the installation, calibration, maintenance, and operation of a CEMS or any other monitoring approved by the Department. All monitoring data shall be defined and recorded for showing compliance with the emission limit(s).

~~f-(f)~~ The limitations and requirements listed in the permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

~~K-(K)~~ Exceptions

~~1-(1)~~ Upon request, the Department may alter operating permits, compliance schedules, or other restrictions on operation of a source provided that resulting ambient air concentration levels will not exceed any national or state ambient air quality standard. Factors to be considered by the Department may include, but are not limited to, technology, economics, national energy policy, and existing air quality. The request by the source must also show the following:

~~a-(a)~~ Good faith efforts have been made to comply with the state requirements;

~~b-(b)~~ The source is unable to comply with the state requirements 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;

~~c-(c)~~ Any available operating procedures or control measures reducing the impact of the source on ambient air concentrations have been implemented; and

~~d-(d)~~ The request is submitted in a timely manner.

2-(2) The provisions of this paragraph shall not apply to mass emission limits which are imposed upon any source by the following requirements:

~~a.~~(a) Federal New Source Performance Standards (NSPS);

~~b.~~(b) National Emission Standards for Hazardous Air Pollutants (NESHAP);

~~e.~~(c) Federal or State Prevention of Significant Deterioration (PSD) Regulations; or

~~d.~~(d) Nonattainment requirements.

~~3.~~(3) Where a permanent increase in the visible emission limitation for a source is requested, the source must demonstrate that it will remain in compliance with the applicable particulate emission standard.

~~4.~~(4) Any alternative compliance schedule shall provide for compliance with the applicable regulations as expeditiously as practicable based on a plan submitted with the request for the alternative compliance schedule.

~~5.~~(5) Any request under this section will be subjected to public notice and opportunity for a public hearing. Upon approval by the Board, the recommendations of this Department shall be sent to the Administrator, or his designated representative, for approval or disapproval.

~~6.~~(6) Where alternative compliance schedule provisions are contained elsewhere in the air pollution control regulations, those provisions shall supersede the requirements in this section.

~~L.~~(L) Emergency Provisions

~~1.~~(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, in which a situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

~~2.~~(2) An emergency may be documented through properly signed, contemporaneous operating logs and other relevant evidence that verify:

~~a.~~(a) An emergency occurred and the owner or operator can identify the cause(s) of the emergency;

~~b.~~(b) The permitted source was, at the time the emergency occurred, being properly operated;

~~e.~~(c) During the period of the emergency, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

~~d.~~(d) The owner or operator gave a verbal notification of the emergency to the Department within twenty-four (24) hours of the time when emission limitations were exceeded, followed by a written report within thirty (30) days. The written report shall include, at a minimum, the information required by Section ~~II-J.1.e.i~~(J)(1)(c)(i) through ~~J.1.e.viii~~(J)(1)(c)(viii) above. The written report shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

~~3.~~(3) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

~~M.~~(M) Transfer of Ownership/Operation

Within thirty (30) days of the transfer of ownership/operation of a facility, the current permit holder and prospective new owner/operator shall submit to the Department a written request for transfer of the source operating or construction permit(s). The written request for transfer of the source operating or construction permit(s) shall include any changes pertaining to the facility name; the name, mailing address, and telephone number of the owner or operator for the facility; and any proposed changes to the permitted activities of the source. Transfer of the operating or construction permit(s) will be effective upon written approval by the Department.

~~N.~~(N) Public Participation Procedures

~~1.~~(1) When determined to be appropriate by the Department (or specified by regulation), notice of permitting activity shall be provided to the public and other entities for their review and comment. Public notice shall be given by publication in a newspaper of general circulation in the area where the source is located, or by posting ~~on a public website identified by the Department's website~~, or by publication in the South Carolina State Register, and to persons on a mailing list developed by the Department, including those who request in writing to be on the list. The Department may use ~~other~~additional means of public notice, including, but not limited to public meetings.

~~2.~~(2) The notice shall include the following:

~~a.~~(a) The name and physical address of the facility;

~~b.~~(b) The name and address of the Department;

~~c.~~(c) Applicable activities involved in the permit action;

~~d.~~(d) Applicable emission change involved in any permit modification;

~~e.~~(e) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and all other materials available to the Department that are relevant to the permit decision, except for information entitled to confidential treatment (the contents of any proposed or draft permit shall not be treated as confidential information);

~~f.~~(f) A brief description of the comment procedures; and

~~g.~~(g) The time and place of any public hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

~~3.~~(3) The Department shall provide at least thirty (30) days for public and EPA comment and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

~~a.~~(a) The Department shall keep a record of the commenters and the comments made during the public comment period.

~~b.~~(b) The Department shall consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application.

~~4.~~(4) A newly constructed or modified source issued a federally enforceable final construction permit will not require an additional public comment period and/or hearing to obtain an operating permit, unless the source proposes a change in the original construction and/or operational plan, prior to commencing construction, which the Department determines would require an additional public comment period and/or hearing.

~~5.~~(5) Any proposed new or modified stationary source required to undergo a public comment period shall not commence any construction until all public participation procedures of this section are completed, and the source has received an effective construction permit from the Department.

~~(6).~~ Maintenance activities, repairs, and replacements which the Department determines to be routine for that source category shall not, by themselves, be required to undergo the public participation procedures of Section II-~~N~~(N).

~~(O)~~⊖ Inspection and Entry

Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the Department or an authorized representative to perform the following:

~~1.~~(1) Enter the facility where emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

~~2.~~(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

~~3.~~(3) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and

~~4.~~(4) As authorized by the Clean Air Act and/or the South Carolina Pollution Control Act, sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

SECTION III – EMISSIONS INVENTORY AND EMISSIONS STATEMENTS

~~A.~~(A) General

~~1.~~(1) An emissions inventory is a study or compilation of pollutant emissions. The purposes of emissions inventories are to locate air pollution sources, to define the type and size of sources, to define the type and amount of emissions from each source, to determine pollutant frequency and duration, to determine the relative contributions to air pollution from classes of sources and of individual sources, to provide a basis for air permit fees, and to determine the adequacy of regulations and standards. The requirements of this section notwithstanding, an emissions inventory may be required from any source at any time.

~~2.~~(2) An emissions statement is a less detailed statement which focuses on emissions estimates for pollutants associated with a nonattainment designation.

~~B.~~(B) Emissions Inventory Reporting Requirements

~~1.~~(1) Beginning with the effective date of this regulation, sources must submit an emissions inventory for the previous calendar year by March 31 at a frequency as outlined below:

a.(a) Type A Sources are Title V Sources with annual emissions greater than or equal to any of the emission thresholds listed for Type A Sources in Table 1 below. Type A Sources must submit an emissions inventory every year.

Table 1 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutants	Type A Sources: Annual Cycle	Potential¹ or Actual²
SO _x	≥2500	Potential
VOC	≥250	Potential
NO _x	≥2500	Potential
CO	≥2500	Potential
Pb	≥0.50 ²	Actual
PM ₁₀	≥250	Potential
PM _{2.5}	≥250	Potential
NH ₃	≥250	Potential

¹ Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

² The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

b.(b) All other Title V Sources with annual emissions less than the emission thresholds listed for Type A Sources in Table 1 above must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

c.(c) Nonattainment area (NAA) Sources are sources located in a NAA with annual emissions during any year of the three (3) year cycle greater than or equal to any of the emission thresholds listed for NAA Sources in Table 2 below. These sources that are not also Type A Sources must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

Table 2 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutant	NAA³ Sources: Three-year Cycle	Potential¹ or Actual²
SO _x	≥100	Potential
VOC	≥100 (moderate O ₃ NAA)	Potential
	≥50 (serious O ₃ NAA)	
	≥25 (severe O ₃ NAA)	
	≥10 (extreme O ₃ NAA)	

Table 2 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutant	NAA³ Sources: Three-year Cycle	Potential¹ or Actual²
NO _x	≥100 (all O ₃ NAA)	Potential
CO	≥100 (all O ₃ NAA)	Potential
	≥100 (all CO NAA)	
Pb	≥0.50	Actual
PM ₁₀	≥100 (moderate PM ₁₀ NAA)	Potential
	≥70 (serious PM ₁₀ NAA)	
PM _{2.5}	≥100	Potential
NH ₃	≥100	Potential

¹ Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

² The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

³ Special point source reporting thresholds apply for certain pollutants by type of NAA. The pollutants by nonattainment area are:
 Ozone: VOC, NO_x, and CO;
 Carbon Monoxide: CO; and
 Particulate matter less than 10 microns: PM₁₀.

2.2) Other Requirements

~~a.~~(a) Unless otherwise indicated, all emissions inventories must be submitted to the Department by March 31 following the year of inventory. All applicable information must be recorded in the current format for reporting emissions data provided by the Department.

~~b.~~(b) All newly permitted and constructed Title V Sources which have obtained or are in the process of obtaining a Title V permit and all newly permitted and constructed NAA Sources must complete and submit to the Department an initial emissions inventory for the source's first partial calendar year of operation and an emissions inventory for the source's first full calendar year of operation.

~~i.~~(i) The partial year emissions inventory must be submitted to the Department no later than March 31 of the year following the source's partial year of operation and must include an emissions inventory from the source's operation start date through December 31 of the same year.

~~ii.~~(ii) The first full calendar year emissions inventory must be submitted to the Department by March 31 of the year following the source's first calendar year of operation.

~~iii~~(iii) Sources must submit future emissions inventories on the schedule as described in paragraph ~~B.1.a~~(B)(1)(a), paragraph ~~B.1.b~~(B)(1)(b), and paragraph ~~B.1.e~~(B)(1)(c) of this section.

~~e~~(c) Any existing sources that are determined by the Department to be subject to Regulation 61-62.70, Title V Operating Permit Program, and/or NAA Sources must complete and submit to the Department an emissions inventory for the previous calendar year within ninety (90) days. These sources must then submit future emissions inventories on the schedule as described in paragraph ~~B.1.a~~(B)(1)(a), paragraph ~~B.1.b~~(B)(1)(b), and paragraph ~~B.1.e~~(B)(1)(c) of this section.

~~d~~(d) Submittal of emissions inventories outside of the schedules in this section will be accepted and reviewed only if a modification has occurred that required issuance of an air quality permit since the last emissions inventory submittal by the source. This modification must alter the quantity or character of the source's emissions. These sources may submit a new emissions inventory following the first full calendar year of operation after the modification. These sources must then submit future emissions inventories on the schedule described in paragraph ~~B.1.a~~(B)(1)(a), paragraph ~~B.1.b~~(B)(1)(b), and paragraph ~~B.1.e~~(B)(1)(c) of this section.

~~e~~(e) Information required in an emissions inventory submittal to the Department must include the following:

- ~~i~~(i) Information on fuel burning equipment;
- ~~ii~~(ii) Types and quantities of fuel used;
- ~~iii~~(iii) Fuel analysis;
- ~~iv~~(iv) Exhaust parameters;
- ~~v~~(v) Control equipment information;
- ~~vi~~(vi) Raw process materials and quantities used;
- ~~vii~~(vii) Design, normal, and actual process rates;
- ~~viii~~(viii) Hours of operation;
- ~~ix~~(ix) Significant emission generating points or processes as discussed in the current format for reporting emissions data provided by the Department;
- ~~x~~(x) Any desired information listed in 40 CFR Part 51 Subpart A (December 17, 2008) that is requested by the Department;
- ~~xi~~(xi) Emissions data from all regulated pollutants; and
- ~~xii~~(xii) Any additional information reasonably related to determining if emissions from an air source are causing standards of air quality to be exceeded.

~~f~~(f) A source may submit a written request to the Department for approval of an alternate method for estimating emissions outside of those methods prescribed by the Department. Such requests will be reviewed by the Department's emissions inventory staff on a case-by-case basis to determine if the alternate method better characterizes actual emissions for the reporting period than the Department's prescribed methods.

~~g~~(g) Emission estimates from insignificant activities listed on a source's permit are required only in the initial emissions inventory submitted by the source. If emissions from these insignificant activities have not been included in a past emissions inventory submitted to the Department, the source must include these emissions in their next required emissions inventory submittal.

~~h~~(h) Copies of all records and reports relating to emissions inventories as required in this section must be retained by the owner/operator at the source for a minimum of five (5) years.

~~C~~(C) Emissions Statement Requirements

~~1.~~(1) Sources in areas designated nonattainment for an ozone National Ambient Air Quality Standard (NAAQS) must submit to the Department by March 31 for the previous calendar year an emissions statement which includes emissions estimates for both VOCs and nitrogen oxides (NO_x) beginning with the effective date of this regulation.

~~2.~~(2) The statement must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

~~3.~~(3) All applicable information must be recorded in the current format for reporting emissions data provided by the Department.

~~4.~~(4) Copies of all records and reports relating to emissions statements as required in this section must be retained by the owner or operator at the source for a minimum of five (5) years.

SECTION IV – SOURCE TESTS

~~A.~~(A) Applicability

~~1.~~(1) This section shall apply to the owner, operator, or representative of any source which conducts:

~~a.~~(a) A source test required under an applicable standard or permit condition; or pursuant to a judicial or administrative order, consent agreement, or any other such binding requirement entered into after the effective date of this standard; or

~~b.~~(b) Any other source test from which data will be submitted to the Department for any purpose including but not limited to: determination of applicability of regulatory requirements, development of emission factors, establishment of parameters for compliance assurance monitoring, continuous emission monitor performance specification testing, and Relative Accuracy Test Audits (RATA).

~~2.~~(2) The Department may, on a case-by-case basis, exempt from the requirements of this section source tests which are performed for development of emission factors or for determination of applicability of regulations.

~~B.~~(B) Submission and Approval of a Site-Specific Test Plan

~~1.~~(1) Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that:

~~a.~~(a) A written site-specific test plan, including all of the information required in Section IV, ~~C.~~(C) below, has been developed and submitted to the Department. If the Department has previously approved a site-specific test plan, the owner, operator, or representative may submit a letter which references the approved plan and which includes a thorough description of amendments to the plan; and

~~b.~~(b) Written Department approval of the site-specific test plan or amended test plan, methods, and procedures has been received.

~~2.~~(2) All test methods included in the site-specific test plan must be either EPA Reference Methods described in 40 CFR Part 51, Appendix M; or 40 CFR Part 60, Appendix A; or 40 CFR Part 61, Appendix B; or 40 CFR Part 63, Appendix A. If an applicable air regulation or permit provides for a choice of test methods, the selected method must be approved by the Department. If an applicable air regulation or permit

does not specify use of an EPA standard reference method, the alternative test method to be used must be approved by the Department.

~~3.a.(3)(a)~~ The owner, operator, or representative of a source proposing to use alternative source test methods shall ensure that the alternative source test method is either validated according to EPA Reference Method 301 (40 CFR Part 63, Appendix A, December 29, 1992) and any subsequent amendments or editions, or approved by the Department.

~~b.(b)~~ The owner, operator, or representative shall ensure that requests for approval of alternative source test methods are submitted to the Department along with the site-specific test plan, and that the submission contains all of the information required by Section IV.~~C~~(C) below.

~~4.(4)~~ The Department shall determine whether any source test method proposed in the site-specific test plan is appropriate for use.

~~5.a.(5)(a)~~ The owner, operator, or representative shall submit site-specific test plans or a letter which amends a previously approved test plan at least forty-five (45) days prior to the proposed test date- or as otherwise specified by a relevant federal or state requirement. Sources conducting tests for substances listed in Regulation 61-62.5, Standard No. 8, shall submit site-specific test plans or a letter which amends a previously approved test plan at least sixty (60) days prior to the proposed test date.

~~b.(b)~~ If the only amendments to a previously approved test plan are to facility information included in Section IV.~~C-1.a~~(C)(1)(a) and ~~C-1.b~~(C)(1)(b) below, the requirement in Section IV.~~B-5.a~~(B)(5)(a) above will not apply. The owner, operator, or representative however, shall submit the amendments at least two (2) weeks prior to the proposed test date.

~~6.(6)~~ Within thirty (30) days of site-specific test plan receipt, the Department will notify the owner, operator, or representative of site-specific test plan approval or denial or will request additional information.

~~7.(7)~~ The owner, operator, or representative shall submit any additional information requested by the Department necessary to facilitate the review of the site-specific test plan.

~~8.(8)~~ Approval of a site-specific test plan for which an owner, operator, or representative fails to submit any additional requested information will be denied.

~~9.(9)~~ Neither the submission of a site-specific test plan, nor the Department's approval or disapproval of a plan, nor the Department's failure to approve or disapprove a plan in a timely manner shall relieve an owner, operator, or representative of legal responsibility to comply with any applicable provisions of this section or with any other applicable federal, state, or local requirement or prevent the Department from enforcing this section.

~~C~~(C) Requirements for a Site-Specific Test Plan

A site-specific test plan shall include, at a minimum, the following (~~Section IV.C-1~~(C)(1) through ~~C-8~~(C)(8)):

~~1~~(1) General Information:

~~a~~(a) Facility name, address, telephone number, and name of facility contact;

~~b~~(b) Facility permit number and source identification number;

~~e-(c)~~ Name, address, and telephone number of the company contracted to perform the source test; and

~~d-(d)~~ Name, address, and telephone number of the laboratory contracted to perform the analytical analysis of the source test samples.

~~2-(2)~~ Test Objectives:

~~a-(a)~~ Description and overall purpose of the tests (for example, to demonstrate compliance, to establish emission factors, etc.); and

~~b-(b)~~ Citation of any applicable state or federal regulation or permit condition requiring the tests.

~~3-(3)~~ Process Descriptions:

~~a-(a)~~ Description of the process including a description of each phase of batch or cyclic processes and the time required to complete each phase;

~~b-(b)~~ Process design rates ~~and~~, normal operating rates, and operating rates specified by applicable regulation;

~~e-(c)~~ Proposed operating rate and conditions for the source test;

~~d-(d)~~ Methods including proposed calculations, equations, and other related information that will be used to demonstrate and verify the operating rate during the source test;

~~e-(e)~~ Description of any air pollution control equipment;

~~f-(f)~~ Description of any stack gas or opacity monitoring systems;

~~g-(g)~~ Description of all air pollution control monitors (for example, pressure gauges, flow indicators, cleaning cycle timers, electrostatic precipitator voltage meters, etc.) when applicable; and

~~h-(h)~~ A list of process and air pollution control operating parameters that will be recorded during the tests, the responsible party who will record these readings, and the frequency at which readings will be recorded.

~~4-(4)~~ Safety Considerations:

~~a-(a)~~ Identification of any risks associated with sampling location and accessibility, toxic releases, electrical hazards, or any other unsafe conditions; and a plan of action to correct or abate these hazards; and

~~b-(b)~~ List of all necessary or required safety equipment including respirators, safety glasses, hard hats, safety shoes, hearing protection, and other protective equipment.

~~5-(5)~~ Sampling and Analytical Procedures:

~~a-(a)~~ Description of sampling methods to be used;

~~b-(b)~~ Description of analytical methods to be used;

~~e.~~(c) Number of tests to be conducted;

~~d.~~(d) Number of runs comprising a test;

~~e.~~(e) Duration of each test run;

~~f.~~(f) Description of minimum sampling volumes for each test run;

~~g.~~(g) Location where samples will be recovered;

~~h.~~(h) Explanation of how blank and recovery check results and analytical non-detects will be used in final emission calculations;

~~i.~~(i) Maximum amount of time a sample will be held after collection prior to analysis; and

~~j.~~(j) Method of storing and transporting samples.

~~6.~~(6) Sampling Locations and Documentation:

~~a.~~(a) Schematics of sampling sites (include stack dimensions and distances upstream and downstream from disturbances);

~~b.~~(b) A description of all emission points, including fugitive emissions, associated with the process to be tested, and when applicable, the method that will be used to measure or include these emissions during the source test; and

~~c.~~(c) Procedure for verifying absence of cyclonic or non-parallel stack gas flow.

~~7.~~(7) Internal Quality Assurance/Quality Control (QA/QC) Measures - for each proposed test method when applicable:

~~a.~~(a) Citation of the QA/QC procedures specified in the EPA Reference Methods and the EPA Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III;

~~b.~~(b) Chain-of-custody procedures and copies of chain-of-custody forms;

~~c.~~(c) Procedure for conditioning particulate matter filters (before and after source testing);

~~d.~~(d) Procedure for conducting leak checks on vacuum lines, pitot tubes, flexible bags, orsats, etc.;

~~e.~~(e) Equipment calibration frequencies, ranges, and acceptable limits;

~~f.~~(f) Minimum detection limits of analytical instrumentation;

~~g.~~(g) Names, addresses, and responsible persons of all sub-contracting laboratories and a description of analytical methods to be used, chain-of-custody procedures, and QA/QC measures;

~~h.~~(h) QA/QC measures associated with the collection and analysis of process or raw material samples and the frequency at which these samples will be collected;

~~i.~~(i) Methods for interference and matrix effects checks, and number of replicate analyses;

~~j.~~(j) Methods and concentrations for internal standards (standards additions prior to extraction);

~~k.~~(k) Methods and concentrations for surrogate standards (standards additions to collection media prior to sampling);

~~l.~~(l) Methods for recovery checks, field blanks, lab blanks, reagent blanks, proof rinse blanks, and analytical blanks;

~~m.~~(m) Proposed range of recoveries for data acceptability and method of data interpretation if sample recovery is not within the proposed range; and

~~n.~~(n) Procedure for obtaining, analyzing, and reporting source test method performance audit samples and results.

~~8.~~(8) Final Test Report Content:

~~a.~~(a) Final report outline;

~~b.~~(b) Example calculations when using alternative test methods or for calculation of process operating rates; and

~~e.~~(c) Proposed report submission date if more than thirty (30) days after the source test will be needed to complete the report.

~~D.~~(D) Notification and Conduct of Source Tests

~~1.~~(1) Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that a complete written notification is submitted to the Department at least two (2) weeks prior to the test date or as otherwise specified by a relevant federal or state requirement. Submission of a site-specific test plan or amendments to a previously approved test plan does not constitute notification. Requirements for a complete notification include the following:

~~a.~~(a) Facility name, permit number, mailing address, physical address, and contact name and phone number;

~~b.~~(b) Source(s) being tested, source identification number(s), and pollutant(s) being tested;

~~e.~~(c) Proposed test date and start time for each source being tested; and

~~d.~~(d) Approved test plan being used to conduct the test identified by Department approval date.

~~2.~~(2) In the event the owner, operator, or representative is unable to conduct the source test on the date specified in the notification, the owner, operator, or representative shall notify the Department as soon as practical by telephone and follow up in writing within thirty (30) days. Telephone notification shall include a description of the circumstance(s) causing the cancellation of the test, and a projected retest date. The written follow-up report shall include a description of the condition(s) which prevented the source test from being conducted, and when applicable, what corrective action was performed, or what equipment repairs were required.

~~3~~-(3) Rescheduling of canceled source tests must meet the two-week notice requirement. However, shorter notification periods may be allowed subject to Department approval.

~~4~~-(4) All tests shall be conducted by or under the direction of a person qualified by training and/or experience in the field of air pollution testing or, where required by federal regulation, meeting the minimum competency requirements for air emissions testing as specified in ASTM D7036-04, Standard Practice for Competence of Air Emission Testing Bodies.

~~5~~-(5) Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested or as otherwise specified in a relevant federal or state requirement. Examples of the operating parameters that may affect emission rates are: type and composition of raw materials and fuels, isolation of control equipment modules, product types and dimensions, thermal oxidizer combustion temperature, atypical control equipment settings, etc. Some sources may have to spike fuels or raw materials to avoid being permitted at a more restrictive feed or process rate. Any source test performed at a production rate less than the rated capacity may result in permit limits on emission rates, including limits on production if necessary.

~~6~~-(6) When conducting a source test subject to this section, the owner, operator, or representative of a source shall provide the following:

- ~~a~~-(a) Department access to the facility to observe source tests;
- ~~b~~-(b) Sampling ports adequate for test methods;
- ~~c~~-(c) Safe sampling site(s);
- ~~d~~-(d) Safe access to sampling site(s);
- ~~e~~-(e) Utilities for sampling and testing equipment; and
- ~~f~~-(f) Equipment and supplies necessary for safe testing of a source.

~~E~~-(E) Source Test Method Performance Audit Program

~~1~~-(1) The Department may request that samples collected during any source tests be split with the Department for analysis by an independent or Department laboratory. Any request for split samples will be made in advance of the source test.

~~2~~-(2) Performance testing shall include a test method performance audit (PA) during the performance test if a PA sample is commercially available.

~~a~~-(a) PAs consist of blind audit samples supplied by an accredited audit sample provider (AASP) and analyzed during the performance test in order to provide a measure of test data bias.

~~b~~-(b) An “accredited audit sample provider (AASP)” is an organization that has been accredited to prepare audit samples by an independent, third party accrediting body.

~~3~~-(3) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes.

~~a.~~(a) No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A-2 of 40 CFR Part 60; Methods 6C, 7E, 9, and 10 of Appendix A-4 of 40 CFR Part 60; Method 18 of Appendix A-6 of 40 CFR Part 60; Methods 20, 22, and 25A of Appendix A-7 of 40 CFR Part 60; and Methods 303, 318, 320, and 321 of Appendix A of 40 CFR Part 63.

~~b.~~(b) If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test.

~~c.~~(c) Upon request, the Department may waive the requirement to include an audit sample if the Department determines that an audit sample is not necessary. A waiver of the performance audit requirements to conduct a PA for a particular source does not constitute a waiver of performance audit requirements for future source tests.

~~d.~~(d) “Commercially available” means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, <http://www.epa.gov/ttn/emc>, to confirm whether there is an AASP that can supply an audit sample for that method.

~~e.~~(e) If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test.

~~f.~~(f) When ordering an audit sample, the source, operator, or representative shall give the AASP an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the Department.

~~g.~~(g) The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the Department and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the Department first and then report to the AASP.

~~h.~~(h) If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the Department is present at the testing site. The source owner, operator, or representative may request in the test protocol a waiver to the requirement that a representative of the Department must be present at the testing site during the field analysis of an audit sample.

~~i.~~(i) The final test report shall document any attempt to obtain an audit sample and, if an audit sample was ordered and utilized, the pass/fail results as applicable.

~~4.~~(4) The Department shall have discretion to require any subsequent remedial actions of the owner, operator, or representative based on the split samples and/or performance audit results.

~~F.~~(F) Final Source Test Report

~~1.~~(1) The owner, operator, or representative of a source subject to this section shall submit a written report of the final source test results to the Department by the close of business on the 30th day following

the completion of the test, unless an alternative date has been requested in and approved with the site-specific test plan prior to testing or is otherwise specified in a relevant federal or state ~~standard~~ requirement.

~~2-~~(2) The final test report for each site-specific test plan shall contain, at a minimum, the following supporting information when applicable:

~~a-~~(a) Summary of the results;

~~b-~~(b) Emission calculations and emission rates in units of the applicable standard, permit limit, etc.;

~~c-~~(c) Allowable emission rates in units of the applicable standard, permit limit, etc.;

~~d-~~(d) Source compliance status;

~~e-~~(e) Process operating rates;

~~f-~~(f) Methods including actual calculations, equations, and other related information that were used to demonstrate and verify the operating rate during the source test;

~~g-~~(g) Chain of custody records;

~~h-~~(h) Certification of all reference standards used;

~~i-~~(i) Signature of a responsible facility representative who can verify process operating rates and parameters;

~~j-~~(j) Legible copies of all raw laboratory data (for example, filter tare and final weights, titrations, chromatograms, spectrograms, analyzer measurements, etc.);

~~k-~~(k) Legible copies of all raw field data (for example, strip charts, field data forms, field calibration forms, etc.);

~~l-~~(l) Legible copies of applicable stack gas or opacity monitoring system readings identified in the approved site-specific test plan;

~~m-~~(m) Legible copies of all applicable process and air pollution control operating parameter readings identified in the approved site-specific test plan;

~~n-~~(n) Results of all calibrations and QA/QC measures and checks identified in the approved site-specific test plan;

~~o-~~(o) Results of performance audits pursuant to Section IV-~~E~~(E) above or documentation that no audit sample was commercially available 60 days prior to the beginning of the compliance test;

~~p-~~(p) Description of any deviations from the proposed process operations as approved in the site-specific test plan during testing;

~~q-~~(q) Description of any deviations from approved sampling methods/procedures;

~~r-~~(r) Description of any deviations from approved analytical procedures;

~~s~~-(s) Description of any problems encountered during sampling and analysis, and explanation of how each was resolved; and

~~t~~-(t) Legible copies of any applicable or required certifications (for example, Visible Emission Observer, Qualified Source Testing Individual (QSTI), etc.).

~~G~~-(G) Noncompliant Results

Within fifteen (15) days of submission of a test report indicating noncompliance, the owner, operator, or representative shall submit to the Department a written plan which includes at a minimum:

~~1~~-(1) Interim actions being taken to minimize emissions pending demonstration of compliance;

~~2~~-(2) Corrective actions that have been taken or that are proposed to return the source to compliance;

~~3~~-(3) Method that will be used to demonstrate the source has returned to compliance (for example, retest and proposed date); and

~~4~~-(4) Any changes necessary to update the site-specific test plan prior to a retest.

~~H~~-(H) Analytical Observation

Upon request by the Department, the owner, operator, representative, or the source test consultant shall ensure that Department representatives are provided access to the analytical laboratory for observation of instrument calibrations and analysis of field and audit samples.

~~I~~-(I) Site Inspection

Upon request by the Department and prior to approval of the site-specific test plan, the owner, operator, or representative shall ensure Department representatives are provided access to the site for inspection of the source(s) to be tested.

~~J~~-(J) Modifications

Modifications to the approved site-specific test plan must have prior Department approval. Approval shall be considered on a case-by-case basis. Failure to obtain prior Department approval may cause final test results to be unacceptable.

SECTION V – CREDIBLE EVIDENCE

~~A~~-(A) The Department promulgated Regulation 61-62, Air Pollution Control Regulations and Standards, and developed the South Carolina Air Quality Implementation Plan to provide enforceable emission limitations; to establish an adequate enforcement program; to require owners or operators of stationary sources to monitor emissions, submit periodic reports of such emissions, and maintain records as specified by various regulations and permits; and to evaluate reports and records for consistency with the applicable emission limitation or standard on a continuing basis over time. The monitoring data collected and records of operations would serve as the basis for a source to certify compliance, and could be used by the Department as direct evidence of an enforceable violation of the underlying emission limitation or standard.

~~B~~-(B) The purpose of this section is:

~~1-(1)~~ To clarify the statutory authority of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan, whereby non-reference test data and various kinds of information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards;

~~2-(2)~~ To eliminate any potential ambiguity regarding language that has been interpreted to provide for exclusive reliance on reference test methods as the means of certifying compliance with various emission limits; and

~~3-(3)~~ To curtail language that limits the types of testing or monitoring data that may be used for determining compliance and for establishing violations.

~~C-(C)~~ The following are applicable in the determination of noncompliance by the Department or for compliance certification by the owners or operators of stationary sources:

~~1-(1)~~ Enforcement - Consistent with South Carolina’s Environmental Audit Privilege and Voluntary Disclosure Act, codified as S.C. Code Ann. Sections 48-57-10 et seq., and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan; and

~~2-(2)~~ Compliance Certifications - Consistent with South Carolina’s Environmental Audit Privilege and Voluntary Disclosure Act, codified as S.C. Code Ann. Sections 48-57-10 et seq., and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed for the purpose of submitting compliance certifications.

61-62.5. Standard No. 2. Ambient Air Quality Standards.

The following table, unless otherwise noted, constitutes the primary and secondary ambient air quality standards for the State of South Carolina. The computations for determining if the applicable standard is met, along with the analytical methods to be used, will be those applicable Federal Reference Methods and Interpretations published in the Appendices to 40 Code of Federal Regulations (CFR) Part 50, or those methods designated as Federal Equivalent Methods (FEM) in accordance with 40 CFR Part 53. ~~In the case of Gaseous Fluorides, either the double paper tape sampler method (ASTM D 3266 91 or later), the sodium bicarbonate coated glass tube and particulate filter method (ASTM D 3268 91 or later), or an approved method may be used.~~

Pollutant	Reference	Measuring Interval	Standard Level			
			mg/m ³	µg/m ³	Ppm	ppb
Sulfur Dioxide	40 CFR 50.4 40 CFR 50.5	3 hour (secondary)	-	1300	0.5	-
	40 CFR 50.17	1- hour (primary)	-	-	-	75
PM ₁₀	40 CFR 50.6	24 hour	-	150	-	-

Pollutant	Reference	Measuring Interval	Standard Level			
			mg/m ³	µg/m ³	Ppm	ppb
PM _{2.5}	40 CFR 50.13	24 hour (primary)	-	35	-	-
	40 CFR 50.18	Annual (primary)	-	12	-	-
		24 hour (secondary)	-	35		
		Annual (secondary)	-	15		
Carbon Monoxide	40 CFR 50.8	1 hour (no secondary)	40	-	35	-
		8 hour (no secondary)	10	-	9	-
Ozone	40 CFR 50.15	8 hour (2008)	-	-	0.075	-
	40 CFR 50.19	8 hour (2015)	-	-	0.070	-
Nitrogen Dioxide	40 CFR 50.11	Annual	-	100	0.053	53
		1-hour				100
Lead	40 CFR 50.16	Rolling 3-month Average	-	0.15	-	-

61-62.5. Standard No. 5.2. Control of Oxides of Nitrogen (NO_x).

SECTION I - APPLICABILITY

~~A-(A)~~ Except as provided in paragraph ~~B-(B)~~ of this part, the provisions of this regulation shall apply to any stationary source that emits or has the potential to emit oxides of nitrogen (NO_x) generated from fuel combustion. A stationary source becomes an affected source under this regulation upon meeting one or more of the criteria specified in paragraphs (A)(1), (A)(2), and (A)(3) below:

(1) Any new source that is constructed after June 25, 2004;

(2) Any existing source where a burner assembly is replaced with another burner assembly after the effective date of this regulation, regardless of size or age of the burner assembly to be replaced shall become an existing affected source and is subject to sections (V), (VI), and (VII) below. The replacement of individual components such as burner heads, nozzles, or windboxes does not trigger affected source status.

(3) Any existing source removed from its presently permitted facility (either from in-state or out-of-state) and moved to another permitted facility in-state after the effective date of this regulation shall be considered a new affected source. Any existing sources relocated between permitted facilities within the State under common ownership shall not become an existing affected source until Section ~~I(A)~~(A)(2) is triggered.

~~B-(B)~~ Exemptions:

The following sources are exempt from all requirements of this regulation unless otherwise specified:

(1) Any source emitting NO_x listed on the Regulation 61-62.1, Section II(B), Exemptions.

~~(2) Any source emitting NO_x listed on the Department maintained list under Regulation 61-62.1, Section II(B)(3).~~

(1) Boilers of less than 10 million British thermal unit per hour (BTU/hr) rated input.

(2) Any source that qualifies as exempt under Regulation 61-62.1, II(B)(2) or II(B)(3).

(3) Any source with total uncontrolled potential to emit less than 5 tons per year of NO_x.

~~(34)~~ Any source which has undergone a Best Available Control Technology (BACT) analysis or Lowest Achievable Emission Rate (LAER) for NO_x in accordance with Regulation 61-62.5, Standard No. 7, and 7.1, respectively.

~~(45)~~ Any stationary internal combustion engine with a mechanical power output of less than two hundred (200) brake horsepower (bhp) or 149kW.

~~(56)~~ Any device functioning solely as a combustion control device. Waste heat recovery from these combustion control devices shall not be considered primary grounds for exclusion from this exemption.

~~(67)~~ Any equipment that has NO_x limits pursuant to the requirements of 40 Code of Federal Regulations (CFR) Parts 60, 61, or 63 where such limits are equivalent to, or more stringent than, the requirements of this regulation.

~~(78)~~ Any source that has NO_x limits pursuant to the requirements of Regulation 61-62.967, Cross-State Air Pollution Rule (CSAPR) Trading Program, where such limits are equivalent to, or more stringent than, the requirements of this regulation.

~~(89)~~ Any source that has NO_x limits pursuant to the requirements of Regulation 61-62.99.

~~(910)~~ Air Curtain Incinerators.

~~(1011)~~ Engines Test Cells and/or Stands.

~~(1112)~~ Portable and temporary internal combustion (IC) engines such as those associated with generators, air compressors, or other applications provided that they fall in the categories listed in 40 CFR Part 89, (Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines), 40 CFR Part 1039 (Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines), and 40 CFR Part 1068 (General Compliance Provisions for Highway, Stationary, and Nonroad Programs).

~~(1213)~~ Combustion sources that operate at an annual capacity factor of ten (10) percent or less per year.

~~(1314)~~ Special use burners, such as startup/shutdown burners, that are operated less than 500 hours a year are exempt from the existing source replacement requirements.

~~(1415)~~ Liquor guns on a recovery boiler are only exempt from the standard requirements in Section IV below.

~~(1516)~~ Portable sources such as asphalt plants or concrete batch plants are considered existing sources only and become existing affected sources when the burner assembly is replaced under Section ~~(4)~~I(A)(2).

(1617) The Department reserves the right to consider any other exemptions from this regulation on a case-by-case basis as appropriate.

SECTION II - DEFINITIONS

For the purposes of this regulation, the following definitions shall apply:

~~A.~~(A) Annual Capacity Factor: Means the ratio between the actual heat input to a combustion unit from the fuels during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum steady state design heat input capacity.

~~B.~~(B) Burner Assembly: Means any complete, pre-engineered device that combines air (or oxygen) and fuel in a controlled manner and admits this mixture into a combustion chamber in such a way as to ensure safe and efficient combustion. A self-contained chamber such as is found on a combustion turbine is not a burner assembly for the purposes of this regulation.

~~C.~~(C) Case-by-Case NO_x Control: Means an emissions limitation based on the maximum degree of reduction for NO_x which would be emitted from any new source which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source through application of production processes or available methods, systems, and techniques. In no event shall application of NO_x control result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular source would make the impositions of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of NO_x control. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

~~D.~~(D) Combustion Control Device: Means, but is not limited to, any equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere, excluding boilers, process heaters, dryers, furnaces, digesters, ovens, combustors, and similar combustion devices. Such equipment includes, but is not limited to, thermal oxidizers, catalytic oxidizers, and flares.

~~E.~~(E) Constructed: Means the on-site fabrication, erection, or installation of the NO_x emitting source.

~~F.~~(F) Equivalent Technology: Means any item that is identical or functionally equivalent to the existing component. This component may serve the same purpose or function as the replaced component, but may be different in some respects or improved in some ways.

~~G.~~(G) Existing affected source: Means sources constructed on or before June 25, 2004, and that meet the applicability requirements of Section ~~(H)~~(A)(2).

~~H.~~(H) Fuel: Means the following fuels, any combination of the fuels or any combustible material the Department determines to be a fuel including, but not limited to:

(1) Virgin fuel, waste, waste fuel, and clean wood (biomass fuel) as defined in Regulation 61-62.1.

(2) Biodiesel: Means a mono-alkyl ester derived from vegetable oil and animal fat and conforming to ASTM D6751.

(3) Biofuel: Means any biomass-based solid fuel that is not a solid waste. This includes, but is not limited to, animal manure, including litter and other bedding materials; vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (for example, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds.

(4) Digester gas: Means any gaseous by-product of wastewater treatment typically formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO₂.

(5) Fossil Fuel: Means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat. Petroleum for facilities constructed, reconstructed, or modified before May 4, 2011, means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil and residual oil. For units constructed, reconstructed, or modified after May 3, 2011, petroleum means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil, residual oil, and petroleum coke.

(6) Landfill Gas: Means a gaseous by-product of the land application of municipal refuse typically formed through the anaerobic decomposition of waste materials and composed principally of methane and CO₂.

~~I.(I)~~ New affected source: Means any affected source which has been constructed after June 25, 2004, or meets the applicability requirements of Section ~~(I)~~I(A)(3). A new affected source will not be considered an existing affected source at burner assembly replacement under Section ~~(I)~~I(A)(2).

(J) Non-routine maintenance is an unforeseen failure of a single burner assembly in an existing affected source with multiple burner application forcing an unplanned replacement of the existing burner.

~~I.(K)~~ Source: Means an individual NO_x emission unit-a stationary NO_x emission unit, comprised of one or more burners.

SECTION III - STANDARD REQUIREMENTS FOR NEW AFFECTED SOURCES

~~A.(A)~~ Those affected sources as defined in Section I(A)(1) and (A)(3) above shall apply NO_x controls to achieve the limitations provided in Table 1 of this section. Unless otherwise noted, all emission limits for affected sources required to use Continuous Emissions Monitoring (CEMS) shall be based on thirty (30) day rolling averages.

~~B.(B)~~ An affected source may request an alternate control limitation by submitting a demonstration that the alternate limitation is a Case-by-Case NO_x Control as defined in Section II above.

~~C.(C)~~ The Department reserves the right to request that the owner or operator submit additional information for those affected sources that request alternate control limitation in accordance with Section III(B) above.

~~D.(D)~~ Affected sources required to install post combustion technology for the control of NO_x shall be required to use post combustion for the control of NO_x during the ozone season.

Table 1 - NO_x Control Standards

Source Type	Emission Limit
Propane and/or Natural Gas-Fired Boilers	

Source Type	Emission Limit
≥10 million British thermal units per hour (MMBtu/hr) (MMBtu/hr) and < 100 MMBtu/hr	Low-NO _x Burners or equivalent technology, shall achieve 0.036 pounds per million metric-British thermal units (lb/MMBtu)
≥100 MMBtu/hr	Low-NO _x Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.036 lb/MMBtu
Distillate Oil-Fired Boilers	
≥10 MMBtu/hr and < 100 MMBtu/hr	Low-NO _x Burners or equivalent technology, shall achieve 0.15 lb/MMBtu
≥100 MMBtu/hr	Low-NO _x Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.14 lb/MMBtu
Residual Oil-Fired Boilers	
≥10 MMBtu/hr and < 100 MMBtu/hr	Low-NO _x Burners or equivalent technology, shall achieve 0.3 lb/MMBtu
≥100 MMBtu/hr	Low-NO _x Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.3 lb/MMBtu
Multiple Fuel Boilers	
The emission limits for boilers burning multiple fuels are calculated in accordance with the formulas below. Additional fuels or combination of fuels not otherwise listed in this table shall be addressed on a case-by-case basis.	
≥10 MMBtu/hr and < 100 MMBtu/hr	$E_n = [(0.036 \text{ lb/MMBtu } H_{ng}) + (0.15 \text{ lb/MMBtu } H_{do}) + (0.3 \text{ lb/MMBtu } H_{ro}) + (0.35 \text{ lb/MMBtu } H_c) + (0.2 \text{ lb/MMBtu } H_w)] / (H_{ng} + H_{do} + H_{ro} + H_c + H_w)$ <p>where:</p> <p>E_n is the nitrogen oxides emission limit (expressed as nitrogen dioxide (NO₂)), ng/J (lb/million Btu), H_{ng} is the heat input from combustion of natural gas, <u>and/or propane</u>, H_{do} is the heat input from combustion of distillate oil, H_{ro} is the heat input from combustion of residual oil, H_c is the heat input from combustion of coal, and H_w is the heat input from combustion of wood residue.</p>
≥100 MMBtu/hr	$E_n = [(0.036 \text{ lb/MMBtu } H_{ng}) + (0.14 \text{ lb/MMBtu } H_{do}) + (0.3 \text{ lb/MMBtu } H_{ro}) + (0.25 \text{ lb/MMBtu } H_c) + (0.2 \text{ lb/MMBtu } H_w)] / (H_{ng} + H_{do} + H_{ro} + H_c + H_w)$ <p>where:</p> <p>E_n is the nitrogen oxides emission limit (expressed as NO₂), ng/J (lb/million Btu), H_{ng} is the heat input from combustion of natural gas, <u>and/or propane</u>, H_{do} is the heat input from combustion of distillate oil, H_{ro} is the heat input from combustion of residual oil, H_c is the heat input from combustion of coal, and H_w is the heat input from combustion of wood residue.</p>
Wood Residue Boilers	
All types	Combustion controls to minimize NO _x emissions or equivalent technology, shall achieve 0.20 lb/MMBtu

Source Type	Emission Limit
Coal-Fired Stoker Fed Boilers	
< 250 MMBtu/hr	Combustion controls to minimize NO _x emissions or equivalent technology, shall achieve 0.35 lb/MMBtu
≥ 250 MMBtu/hr	Combustion controls to minimize NO _x emissions or equivalent technology, shall achieve 0.25 lb/MMBtu
Pulverized Coal-Fired Boilers	
< 250 MMBtu/hr	Low-NO _x Burners + Combustion controls to minimize NO _x emissions or equivalent technology, shall achieve 0.35 lb/MMBtu
≥ 250 MMBtu/hr	Low-NO _x Burners + Combustion controls to minimize NO _x emissions + Selective Catalytic Reduction (SCR) or equivalent technology, shall achieve 0.14 lb/MMBtu
Municipal Refuse-Fired Boilers	
< 250 MMBtu/hr	Combustion modifications to minimize NO _x emissions + Flue Gas Recirculation or equivalent technology, shall achieve 195 ppmv at 12 percent CO ₂ (0.35 lb/MMBtu)
≥ 250 MMBtu/hr	Staged Combustion and Automatic Combustion Air Control + SCR or equivalent technology, shall achieve 0.18 lb/MMBtu
Internal Combustion Engines	
Compression Ignition	Timing Retard ≤ 4 degrees + Turbocharger with Intercooler or equivalent technology, shall achieve 490 ppmv at 15 percent O ₂ (7.64 gram per bhp-hour (gm/bhp-hr))
Spark Ignition	Lean-Burn Technology or equivalent technology, shall achieve 1.0 gm/bhp-hr
Landfill or Digester Gas-Fired	Lean-Burn Technology or equivalent technology, shall achieve 1.25 gm/bhp-hr
Gas Turbines	
Simple Cycle – Natural Gas	
< 50 Megawatts	Combustion Modifications (for example, dry low-NO _x combustors) to minimize NO _x emissions or equivalent technology, shall achieve 25 ppmv at 15 percent O ₂ Dry Basis
≥ 50 Megawatts	Combustion Modifications (for example, dry low-NO _x combustors) to minimize NO _x emissions or equivalent technology, shall achieve 9.0 ppmv at 15 percent O ₂ Dry Basis
Combined Cycle – Natural Gas	
< 50 Megawatts	Dry Low-NO _x Combustors or equivalent technology, shall achieve 9.0 ppmv at 15 percent O ₂ Dry Basis
≥ 50 Megawatts	Dry Low-NO _x Combustors + SCR or equivalent technology, shall achieve 3.0 ppmv at 15 percent O ₂ Dry Basis
Simple Cycle – Distillate Oil Combustion	
< 50 Megawatts	Combustion Modifications and water injection to minimize NO _x emissions or equivalent technology, shall achieve 42 ppmv at 15 percent O ₂ Dry Basis
≥ 50 Megawatts	Combustion Modifications and water injection to minimize NO _x emissions or equivalent technology, shall achieve 42 ppmv at 15 percent O ₂ Dry Basis
Combined Cycle - Distillate Oil Combustion	

Source Type	Emission Limit
< 50 Megawatts	Dry Low-NO _x Combustors with water injection or equivalent technology, shall achieve 42 ppmv at 15 percent O ₂ Dry Basis
≥ 50 Megawatts	Dry Low-NO _x Combustors, water injection, and SCR or equivalent technology, shall achieve 10 ppmv at 15 percent O ₂ Dry Basis
Landfill Gas-Fired	Water or steam injection or low-NO _x turbine design or equivalent technology, shall achieve 25 ppmv at 15 percent O ₂ Dry Basis
Fluidized Bed Combustion (FBC) Boiler	
Bubbling Bed	Selective Non-catalytic Reduction (SNCR) shall achieve 0.15 lbs/MMBtu
Circulating Bed	SNCR shall achieve 0.07 lbs/MMBtu
Other	
Recovery Furnaces	Fourth <u>Fourth</u> (4 th) level or air to recovery furnace/good combustion practices or equivalent technology, shall achieve 100 ppmv at 8 percent O ₂ Dry Basis
Cement Kilns	Low-NO _x burners or equivalent technology, shall achieve 30 percent reduction from uncontrolled levels.
Lime Kilns	Combustion controls or equivalent technology, shall achieve 175 ppmv at 10 percent O ₂ Dry Basis.
Fuel Combustion Sources burning any non-specified fuel not listed in Table above. (Examples include but are not limited to process heaters not meeting the definition of "boiler" in Regulation 61-62.1 Section I, dryers, furnaces, ovens, duct burners, incinerators, and smelters)	Low-NO _x burners or equivalent technology, shall achieve 30 percent reduction from uncontrolled levels.

SECTION IV - MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS FOR NEW AFFECTED SOURCES

A.(A) Boilers

With the exception of fuel certification and tune-up requirements, compliance with required NO_x monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with the applicable requirements in this section.

(1) CEMS

(a) Except as allowed by the Department, the owner or operator of a boiler rated two hundred (200) MMBtu/hr or greater permitted for solid fuel, shall install, calibrate, maintain, and operate CEMS for measuring NO_x, and Oxygen (O₂) or Carbon Dioxide (CO₂) emissions discharged to the atmosphere, and shall record the output of the system.

(b) The CEMS required under this section shall be operated and data recorded during all periods of operation of the affected source except for CEMS breakdowns and repairs. Data is to be recorded during calibration checks and zero and span adjustments.

(c) The CEMS required under this section shall be installed, calibrated, maintained, and operated in accordance with approved methods in Regulation 61-62.60 or 61-62.72, or as approved by the Department.

(d) Excess Emissions

(i) Excess emissions and monitoring systems performance reports shall be submitted semiannually. All reports shall be postmarked by the thirtieth (30th) day following the end of each six (6) month period. Written reports of excess emissions shall include the following information:

(A) The magnitude of excess emissions, any conversion factor(s) used, the date and time of commencement and completion of each time period of excess emissions, the process operating time during the reporting period.

(B) Specific identification of each period of excess emissions that occurs during ~~startups, shutdowns, and~~ malfunctions of the affected source. The nature and cause of any malfunction (if known), the corrective action taken, or preventative measures adopted.

(C) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(D) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the reports.

(2) Periodic Monitoring and/or Source Test

(a) Unless required to operate a CEMS, testing requirements apply to boilers rated thirty (30) MMBtu/hr or greater permitted for solid fuels and boilers rated greater than one hundred (100) MMBtu/hr permitted for any other fuels.

(b) Except as allowed by the Department, an initial source test for NO_x emissions shall be conducted within one hundred and eighty (180) days after startup.

(c) Periodic source tests for NO_x shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_x standard.

(d) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Fuel Certification

The owner or operator shall record monthly records of the amounts and types of each fuel combusted and maintain these records on site.

(4) Tune-ups

If the owner or operator of a boiler is required to comply with federal tune-up requirements in 40 CFR Part 63, then the federal requirements shall meet the compliance requirements of this paragraph. If the owner or operator of a boiler is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:

(a) The first tune-up shall be conducted no more than twenty-four (24) months from start-up of operation for new affected sources.

~~(a)~~(b) The owners or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

~~(b)~~(c) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

~~(c)~~(d) The owner or operator shall develop and retain a tune-up plan on file.

(5) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any ~~startup, shutdown, or~~ malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; and any periods during which a continuous monitoring system or monitoring device is inoperative.

~~B~~(B) Internal Combustion Engines

With the exception of fuel certification and tune-up requirements, compliance with required NO_x monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with all applicable requirements in this section.

The owner or operator of an affected source shall comply with either (B)(1) or (B)(2) below.

(1) Manufacturer's Certification

(a) Operate and maintain the stationary internal combustion engine and control device according to the manufacturer's emission-related written instructions;

(b) Change only those emission-related settings that are permitted by the manufacturer.

(2) Periodic Monitoring and/or Source Test

(a) Except as allowed by the Department, an initial source test for NO_x shall be conducted within one hundred eighty (180) days after startup.

(b) Periodic source tests for NO_x shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_x standard.

(c) The owner or operator shall operate the affected source(s) within the parameter(s) established during the most recent compliant source tests. A copy of the most recent Department issued source test summary letter(s) that established the parameter(s) shall be maintained with the required permit.

(d) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Tune-Ups

If the owner or operator of an internal combustion engine is required to comply with federal requirements in 40 CFR Part 63 for the internal combustion engine, then the federal requirements shall meet the tune-up requirements of this section. If the owner or operator of an internal combustion engine is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:

(a) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(4) Fuel Certification

The owner or operator shall record monthly the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(5) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any ~~startup, shutdown, or~~ malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; and any periods during which a continuous monitoring system or monitoring device is inoperative.

~~(C)~~ Turbines

With the exception of fuel certification and tune-up requirements, compliance with required NO_x monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with all applicable requirements in this section.

The owner or operator of an affected source shall comply with either (C)(1) or (C)(2) below.

(1) CEMS

(a) Except as allowed by the Department, the owner or operator shall install, calibrate, maintain, and operate CEMS on the turbine for measuring NO_x, and Oxygen (O₂) or Carbon Dioxide (CO₂) emissions discharged to the atmosphere, and shall record the output of the system.

(b) The CEMS required under this section shall be operated and data recorded during all periods of operation of the affected source except for CEMS breakdowns and repairs. Data is to be recorded during calibration checks and zero and span adjustments.

(c) The CEMS required under this section shall be installed, calibrated, maintained, and operated in accordance with approved methods in Regulation 61-62.60 or 61-62.72, or as approved by the Department.

(d) Excess Emissions

(i) Excess emissions and monitoring systems performance reports shall be submitted semiannually. All reports shall be postmarked by the thirtieth (30th) day following the end of each six (6) month period. Written reports of excess emissions shall include the following information:

(A) The magnitude of excess emissions, any conversion factor(s) used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period.

(B) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected source. The nature and cause of any malfunction (if known), the corrective action taken, or preventative measures adopted.

(C) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(D) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the reports.

(2) Parametric Monitoring

(a) Unless required to operate a CEMS, the owner or operator using water or steam injection to control NO_x shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine.

(b) Unless required to operate a CEMS, the owner or operator using a diffusion flame turbine without add-on selective catalytic reduction controls (SCR) to control NO_x, shall define at least four parameters indicative of the unit's NO_x formation characteristics and shall monitor these parameters continuously.

(c) Unless required to operate a CEMS, for any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in low-NO_x mode.

(d) Unless required to operate a CEMS, for any turbine that uses SCR to reduce NO_x, the owner or operator shall continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(3) Periodic Monitoring and/or Source Test

(a) This requirement only applies to turbines not required to operate a CEMS.

(b) The steam or water to fuel ratio or other parameters that are continuously monitored as described in this section shall be monitored during the performance test required under this section to establish acceptable values and ranges. The owner or operator may supplement the performance test data with engineering analyses, design specifications, manufacturer's recommendations, and other relevant information to define the acceptable parametric ranges more precisely. The owner or operator shall develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper

operation of the NO_x emission controls. The plan shall include the parameter(s) monitored and the acceptable range(s) of the parameter(s) as well as the basis for designating the parameter(s) and acceptable range(s). Any supplemental data such as engineering analyses, design specifications, manufacturer's recommendations, and other relevant information shall be included in the monitoring plan.

(c) Except as allowed by the Department, an initial source test for NO_x emissions shall be conducted within one hundred eighty (180) days after startup.

(d) Periodic source tests for NO_x shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_x standard.

(e) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(4) Tune-Ups

(a) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(5) Fuel Certification

The owner or operator shall record monthly the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(6) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any ~~startup, shutdown, or~~ malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

~~(D)~~ All Other Affected Source Types

With the exception of fuel certification and tune-up requirements, compliance with required NO_x monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

If the owner or operator is not required to comply with federal requirements in 40 CFR Part 60 for monitoring NO_x, then the monitoring requirements for the affected source shall be established on a case by case basis.

(1) Tune-Ups

(a) The owner or operator of a combustion source shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(2) Periodic Monitoring and/or Source Test

(a) Except as allowed by the Department, an initial source test for NO_x shall be conducted within one hundred eighty (180) days after startup.

(b) Periodic source tests for NO_x shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_x standard.

(c) The Department reserves the right to require periodic source tests for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Fuel Certification

The owner or operator shall record and maintain monthly records of the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(4) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

SECTION V - STANDARD REQUIREMENTS FOR EXISTING AFFECTED SOURCES

~~A.(A)~~ For those affected sources subject to the requirements of this regulation as defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation, the burner assembly shall be replaced with a low-NO_x burner assembly or equivalent technology, and shall achieve a thirty (30) percent reduction from uncontrolled NO_x emission levels based upon manufacturer's specifications. An exemption from this requirement shall be granted when a single burner assembly is being replaced in an affected source with multiple burners due to non-routine maintenance.

~~B.(B)~~ For those sources defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation, the owner or operator shall notify and register the replacement with the Department in accordance with Section VI below.

~~C.(C)~~ An affected source may request an alternative control methodology to the one specified in paragraph (A) above of this section provided that they can demonstrate to the Department why the NO_x control limits specified are not economically or technically feasible for this specific circumstance. The Department reserves the right to request that the owner or operator submit additional information as necessary for the alternative control methodology determination. Alternative control methodologies granted under this part are not effective until notification is submitted to and approved by the Department.

SECTION VI - NOTIFICATION REQUIREMENTS FOR EXISTING AFFECTED SOURCES

~~A.(A)~~ Burner Assembly Replacement Notifications for Existing Affected Sources

(1) Except for those affected sources that wish to request an alternative control methodology as specified in Section V(C) above, the notification requirements specified in this section shall apply only to existing affected sources as defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation.

(2) Within seven (7) days of replacing an existing burner assembly, the owner or operator shall submit written notification to register the replacement unit with the Department.

(3) Notification shall satisfy the permitting requirements consistent with Regulation 61-62.1, Section II(a).

(4) Notification shall contain replacement unit information as requested in the format provided by the Department. Replacement unit information shall include, at a minimum, all affected units at the source and the date the replacement unit(s) commenced operation.

(5) Those affected sources that wish to receive an emission reduction credit for the control device will be required to submit a permit application prior to replacement of the burner assembly(s).

SECTION VII – TUNE-UP REQUIREMENTS FOR EXISTING SOURCES

~~A.(A)~~ The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices. ~~The first tune-up shall be conducted no more than twenty-four (24) months from start-up of operation for affected new sources and~~ Tune-ups shall be conducted no more than twenty-four (24) months from replacement of a burner assembly for affected existing sources. Each subsequent tune-up shall be conducted no more than twenty-four (24) months after the previous tune-up.

~~B.(B)~~ All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

~~C.(C)~~ The owner or operator shall develop and retain a tune-up plan on file.

61-62.5. Standard No. 7. Prevention of Significant Deterioration.

~~(a)(A)~~ (1) **Reserved.**

(2) Applicability procedures.

~~(i)(a)~~ The requirements of this regulation apply to the construction of any new major stationary source (as defined in paragraph ~~(b)(B)~~(32)) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under 40 Code of Federal Regulations (CFR) 81.341.

~~(ii)(b)~~ The requirements of paragraphs ~~(j)(J)~~ through ~~(r)(R)~~ apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

~~(iii)(c)~~ No new major stationary source or major modification to which the requirements of paragraphs ~~(j)(J)~~ through ~~(r)(R)~~(5) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

~~(iv)(d)~~ The requirements of the program will be applied in accordance with the principles set out in paragraphs ~~(a)(2)(iv)(a)(A)(2)(d)(i)~~ through ~~(f)(A)(2)(d)(vi)~~.

~~(a)(i)~~ Except as otherwise provided in paragraphs ~~(a)(2)(v)~~ and ~~(vi)(A)(2)(e)~~, and consistent with the definition of major modification contained in paragraph ~~(b)(B)(30)~~, a project is a major modification for a regulated New Source Review (NSR) pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph ~~(b)(B)(50)~~), and a significant net emissions increase (as defined in paragraphs ~~(b)(B)(34)~~ and ~~(b)(B)(49)~~). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

~~(b)(ii)~~ The procedure for calculating (before beginning actual construction) whether a significant emissions increase (that is, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs ~~(a)(2)(iv)(e)(A)(2)(d)(iii)~~ through ~~(f)(A)(2)(d)(vi)~~. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (that is, the second step of the process) is contained in the definition in paragraph ~~(b)(B)(34)~~. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

~~(e)(iii)~~ **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph ~~(b)(B)(41)~~) and the baseline actual emissions (as defined in paragraphs ~~(b)(4)(i)(B)(4)(a)~~ and ~~(ii)(B)(4)(b)~~), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph ~~(b)(B)(49)~~).

~~(d)(iv)~~ **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph ~~(b)(B)(37)~~) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph ~~(b)(4)(iii)(B)(4)(c)~~) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph ~~(b)(B)(49)~~).

~~(e)(v)~~ [Reserved]

~~(f)(vi)~~ **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs ~~(a)(2)(iv)(e)(A)(2)(d)(iii)~~ and ~~(d)(A)(2)(d)(iv)~~ as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds, the significant amount for that pollutant (as defined in paragraph ~~(b)(B)(49)~~).

~~(v)(e)~~ For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under ~~paragraph (aa)~~ Section (AA).

~~(b)(B)~~ **Definitions.** For the purposes of this regulation:

~~For the purposes of this regulation:~~

(1)(i)(a) **“Actual emissions”** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(ii)(B)(1)(b) through (b)(1)(iv)(B)(1)(d), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under ~~paragraph (aa)~~ Section (AA). Instead, paragraphs (b)(B)(41) and (b)(B)(4) shall apply for those purposes.

(ii)(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year (~~tpy~~), at which the unit actually emitted the pollutant during a consecutive twenty-four (24)-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii)(c) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv)(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **“Adverse impact on visibility”** means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor’s visual experience of the Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(3) **“Allowable emissions”** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i)(a) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii)(b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii)(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(4) **“Baseline actual emissions”** means the rate of emissions, in ~~tpy tons per year~~, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(4)(i)(B)(4)(a) through (iv)(B)(4)(d).

(i)(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in ~~tpy tons per year~~, at which the unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the five (5)-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a)(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

~~(b)(ii)~~ The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

~~(e)(iii)~~ For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

~~(d)(iv)~~ The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in ~~tpy tons per year~~, and for adjusting this amount if required by paragraph ~~(b)(4)(i)(b)(B)(4)(a)(ii)~~.

~~(ii)(b)~~ For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in ~~tpy tons per year~~, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the ten (10)-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this section or under a plan approved by the Administrator, whichever is earlier, except that the ten (10)-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the twenty-four (24)-month period selected is appropriate.

~~(a)(i)~~ The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

~~(b)(ii)~~ The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

~~(e)(iii)~~ The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four (24)-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

~~(d)(iv)~~ For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

~~(e)(v)~~ The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in ~~tpy tons per year~~, and for adjusting this amount if required by paragraphs ~~(b)(4)(ii)(b)(B)(4)(b)(ii)~~ and ~~(e)(B)(4)(b)(iii)~~.

~~(iii)(c)~~ For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

~~(iv)(d)~~ For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph ~~(b)(4)(i)(B)(4)(a)~~, for other existing emissions units in accordance with the procedures contained in paragraph ~~(b)(4)(ii)(B)(4)(b)~~, and for a new emissions unit in accordance with the procedures contained in paragraph ~~(b)(4)(iii)(B)(4)(c)~~.

(5)~~(i)(a)~~ **“Baseline area”** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than one (1) microgram(s) per cubic meter ($\mu\text{g}/\text{m}^3$) (annual average) for SO_2 , NO_2 , or PM_{10} ; or equal to or greater than $0.3 \mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

~~(ii)(b)~~ Area redesignations under Section 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

~~(a)(i)~~ Establishes a minor source baseline date; or

~~(b)(ii)~~ Is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166- and would be constructed in the same state as the state proposing the redesignation.

~~(iii)(c)~~ Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with paragraph ~~(b)(31)(iv)(B)(31)(d)~~.

(6)~~(i)(a)~~ **“Baseline concentration”** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

~~(a)(i)~~ The actual emissions, as defined in paragraph ~~(b)(B)(1)~~, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph ~~(b)(6)(ii)(B)(6)(b)~~; and

~~(b)(ii)~~ The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

~~(ii)(b)~~ The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

~~(a)(i)~~ Actual emissions, as defined in paragraph ~~(b)(B)(1)~~, from any major stationary source on which construction commenced after the major source baseline date; and

~~(b)(ii)~~ Actual emissions increases and decreases, as defined in paragraph ~~(b)(B)(1)~~, at any stationary source occurring after the minor source baseline date.

(7) **“Begin actual construction”** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(8) **“Best available control technology (BACT)”** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(9)(a) **“Building, structure, facility, or installation”** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (that is, which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and ~~003-005-00176-0~~ 003-005-00716-0, respectively).

(b) Notwithstanding the provisions of paragraph (B)(9)(a), building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within one-fourth (1/4) of a mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(9)(b), has the same meaning as in 40 CFR 63.761.

(10) **“Clean coal technology”** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or ~~oxides of nitrogen~~ oxides associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) **“Clean coal technology demonstration project”** means a project using funds appropriated under the heading “Department of Energy-Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.

(12) **[Reserved]**

(13) **“Commence”** means, as applied to construction of a major stationary source or major modification that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i)(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii)(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(14) **“Complete”** means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(15) **“Construction”** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(16) **“Continuous emissions monitoring system (CEMS)”** means all of the equipment that may be required to meet the data acquisition and availability requirements of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(17) **“Continuous emissions rate monitoring system (CERMS)”** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(18) **“Continuous parameter monitoring system (CPMS)”** means all of the equipment necessary to meet the data acquisition and availability requirements of this regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(19) **“Electric utility steam generating unit”** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) megawatt (MW) electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) **“Emissions unit”** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(B)(19). For purposes of this regulation, there are two types of emissions units as described in paragraphs (b)(20)(i)(B)(20)(a) and (ii)(B)(20)(b).

(i)(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two (2) years from the date such emissions unit first operated.

(ii)(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(20)(i)(B)(20)(a). A replacement unit, as defined in paragraph (b)(B)(45), is an existing emissions unit.

(21) **“Federal Land Manager”** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(22) **“Federally enforceable”** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(23) **“Fugitive emissions”** means those emissions to the outdoor environment which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(24) **“High terrain”** means any area having an elevation 900 feet or more above the base of the stack of a source.

(25) **“Indian Governing Body”** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(26) **“Indian Reservation”** means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(27) **“Innovative control technology”** means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(28) **“Low terrain”** means any area other than high terrain.

(29) **“Lowest achievable emission rate (LAER)”** is as defined in paragraph ~~(e)(5)(B)(20)~~ of Regulation 61-62.5 Standard 7.1, “Nonattainment New Source Review.”

(30)~~(i)(a)~~ **“Major modification”** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph ~~(b)(B)(50)~~) of a regulated NSR pollutant (as defined in paragraph ~~(b)(B)(44)~~); and a significant net emissions increase of that pollutant from the major stationary source.

~~(ii)(b)~~ Any significant emissions increase (as defined in paragraph ~~(b)(B)(50)~~) from any emissions units or net emissions increase (as defined in paragraph ~~(b)(B)(34)~~) at a major stationary source that is significant for volatile organic compounds (VOCs) or ~~oxides of nitrogen~~ oxides shall be considered significant for ozone.

~~(iii)(c)~~ A physical change or change in the method of operation shall not include:

~~(a)(i)~~ Routine maintenance, repair and replacement;

~~(b)(ii)~~ Use of an alternative fuel or raw material by reason of an order under ~~sections~~ Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

~~(e)~~(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

~~(d)~~(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(e)~~(v) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR ~~subpart~~ Part 51, Subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

~~(f)~~(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR ~~subpart~~ Part 51, Subpart I or 40 CFR 51.166.

~~(g)~~(vii) Any change in ownership at a stationary source

~~(h)~~(viii) [Reserved]

~~(i)~~(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State Implementation Plan for the state in which the project is located, and

(2) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

~~(j)~~(x) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

~~(k)~~(xi) The reactivation of a very clean coal-fired electric utility steam generating unit.

~~(iv)~~(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under ~~paragraph (aa)~~ Section (AA) for a PAL for that pollutant. Instead, the definition at paragraph ~~(aa)(2)(viii)~~ (AA)(2)(h) shall apply.

~~(v)~~(e) ~~Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph b(32)(iii) of this section.~~ [Reserved]

(31)~~(i)~~(a) **“Major source baseline date”** means:

~~(a)~~(i) In the case of PM₁₀ and sulfur dioxide, January 6, 1975;

~~(b)~~(ii) In the case of nitrogen dioxide, February 8, 1988; and

~~(e)~~(iii) In the case of PM_{2.5}, October 20, 2010.

~~(ii)~~(b) “**Minor source baseline date**” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

~~(a)~~(i) In the case of PM₁₀ and sulfur dioxide, August 7, 1977;

~~(b)~~(ii) In the case of nitrogen dioxide, February 8, 1988; and

~~(e)~~(iii) In the case of PM_{2.5}, October 20, 2011.

~~(iii)~~(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

~~(a)~~(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

~~(b)~~(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

~~(iv)~~(d) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

(32)(~~i~~)~~(a)~~ “**Major stationary source**” means:

~~(a)~~(i) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred (100) tpy tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140), fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

~~(b)(ii)~~ Notwithstanding the stationary source size specified in paragraph ~~(b)(32)(i)~~ (B)(32)(a)(i), any stationary source which emits, or has the potential to emit, ~~250-tpy tons per year~~ or more of a regulated NSR pollutant; or

~~(e)(iii)~~ Any physical change that would occur at a stationary source not otherwise qualifying under paragraph ~~(b)(B)(32)~~ as a major stationary source, if the changes would constitute a major stationary source by itself.

~~(ii)(b)~~ A major stationary source that is major for VOCs or ~~oxides of nitrogen~~ oxides shall be considered major for ozone.

~~(iii)(c)~~ The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this regulation whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

~~(a)(i)~~ Coal cleaning plants (with thermal dryers);

~~(b)(ii)~~ Kraft pulp mills;

~~(e)(iii)~~ Portland cement plants;

~~(d)(iv)~~ Primary zinc smelters;

~~(e)(v)~~ Iron and steel mills;

~~(f)(vi)~~ Primary aluminum ore reduction plants;

~~(g)(vii)~~ Primary copper smelters;

~~(h)(viii)~~ Municipal incinerators capable of charging more than 250 tons of refuse per day;

~~(i)(ix)~~ Hydrofluoric, sulfuric, or nitric acid plants;

~~(j)(x)~~ Petroleum refineries;

~~(k)(xi)~~ Lime plants;

~~(l)(xii)~~ Phosphate rock processing plants;

~~(m)(xiii)~~ Coke oven batteries;

~~(n)(xiv)~~ Sulfur recovery plants;

~~(o)(xv)~~ Carbon black plants (furnace process);

~~(p)(xvi)~~ Primary lead smelters;

~~(q)(xvii)~~ Fuel conversion plants;

~~(r)(xviii)~~ Sintering plants;

~~(s)~~(xix) Secondary metal production plants;

~~(t)~~(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

~~(u)~~(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

~~(v)~~(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

~~(w)~~(xxiii) Taconite ore processing plants;

~~(x)~~(xxiv) Glass fiber processing plants;

~~(y)~~(xxv) Charcoal production plants;

~~(z)~~(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

~~(aa)~~(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(33) **“Necessary preconstruction approvals or permits”** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(34)~~(i)~~(a) **“Net emissions increase”** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

~~(a)~~(i) The increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to paragraph ~~(a)~~(2)~~(iv)~~(A)(2)~~(d)~~; and

~~(b)~~(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph ~~(b)~~(34)~~(i)~~(b)(B)(34)(a)(ii) shall be determined as provided in paragraph ~~(b)~~(B)(4), except that paragraphs ~~(b)~~(4)~~(i)~~(c)(B)(4)(a)(iii) and ~~(b)~~(4)~~(ii)~~(d)(B)(4)(b)(iv) shall not apply.

~~(ii)~~(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

~~(a)~~(i) The date five (5) years before construction on the particular change commences; and

~~(b)~~(ii) The date that the increase from the particular change occurs.

~~(iii)~~(c) An increase or decrease in actual emissions is creditable only if:

~~(a)~~(i) The Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

~~(b)~~ [Reserved]

~~(c)~~ It occurs within five years before construction on the particular change commences.

~~(d)(ii)~~ As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(32)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories. [Reserved]

~~(iv)(d)~~ An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

~~(v)(e)~~ An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

~~(vi)(f)~~ A decrease in actual emissions is creditable only to the extent that:

~~(a)(i)~~ The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(b)(ii)~~ It is federally enforceable at and after the time that actual construction on the particular change begins; and

~~(c)(iii)~~ It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

~~(vii)(g)~~ [Reserved]

~~(viii)(h)~~ An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

~~(ix)(i)~~ Paragraph ~~(b)(1)(ii)(B)(1)(b)~~ shall not apply for determining creditable increases and decreases.

(35) [Reserved]

(36) ~~[Reserved]~~ **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(37) **"Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source 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 treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(38) **“Predictive emissions monitoring system (PEMS)”** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

(39) **“Prevention of Significant Deterioration (PSD) program”** means the EPA-implemented major source preconstruction permit programs or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(40) **“Project”** means a physical change in, or change in the method of operation of, an existing major stationary source.

(41)(~~i~~)(a) **“Projected actual emissions”** means the maximum annual rate, in ~~tpy~~ tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (~~twelve~~ (12)-month period) following the date the unit resumes regular operation after the project, or in any one of the ten (10) years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(~~ii~~)(b) In determining the projected actual emissions under paragraph (~~b~~)(41)(~~i~~)(B)(41)(a) (before beginning actual construction), the owner or operator of the major stationary source:

(~~a~~)(i) Shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(~~b~~)(ii) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(~~e~~)(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24)-month period used to establish the baseline actual emissions under paragraph (~~b~~)(B)(4) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(~~d~~)(iv) In lieu of using the method set out in paragraph (~~b~~)(41)(~~ii~~)(a)(B)(41)(b)(i) through (~~b~~)(41)(~~ii~~)(e)(B)(41)(b)(iii), may elect to use the emissions unit’s potential to emit, in ~~tpy~~ tons per year, as defined under paragraph (~~b~~)(B)(37).

(42) **“Reactivation of a very clean coal-fired electric utility steam generating unit”** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(~~i~~)(a) Has not been in operation for the two (2)-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of enactment;

~~(ii)~~(b) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eight-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

~~(iii)~~(c) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

~~(iv)~~(d) Is otherwise in compliance with the requirements of the Clean Air Act.

(43) “Reasonably available control technology (RACT)” is as defined in 40 CFR 51.100(o).

(44) “Regulated NSR pollutant,” for purposes of this regulation, means the following:

~~(i)~~(a) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

~~(a)~~(i) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included;

~~(b)~~(ii) Any pollutant identified under this paragraph ~~(i)~~(b) as a constituent or precursor to a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations.

(4) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations.

~~(ii)~~(b) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

~~(iii)~~(c) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; or

~~(iv)~~(d) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list pursuant to Section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to Section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act.

~~(v)~~(e) [Reserved]

(45) **“Replacement unit”** means an emissions unit for which all the criteria listed in paragraphs ~~(b)(45)(i)(B)(45)(a)~~ through ~~(iv)(B)(45)(d)~~ are met. No ~~credible~~ credible emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

~~(i)~~(a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

~~(ii)~~(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

~~(iii)~~(c) The replacement does not alter the basic design parameters of the process unit.

~~(iv)~~(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(46)~~(i)~~(a) **“Repowering”** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

~~(ii)~~(b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

~~(iii)~~(c) The Department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.

(47) **Reserved**

(48) **“Secondary emissions”** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, from a vessel; or from the following:

(i)(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii)(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(49)(i)(a) **“Significant”** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

~~Carbon monoxide: 100 tpy~~

~~Nitrogen oxides: 40 tpy~~

~~Sulfur dioxide: 40 tpy~~

~~Particulate matter:~~

~~25 tpy of particulate matter emissions;~~

~~15 tpy of PM₁₀ emissions~~

~~10 tpy of direct PM_{2.5};~~

~~40 tpy of sulfur dioxide emissions;~~

~~40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph (b)(44) of this section~~

~~Ozone: 40 tpy of VOCs or oxides of nitrogen~~

~~Lead: 0.6 tpy~~

~~Fluorides: 3 tpy~~

~~Sulfuric acid mist: 7 tpy~~

~~Hydrogen sulfide (H₂S): 10 tpy~~

~~Total reduced sulfur (including H₂S): 10 tpy~~

~~Reduced sulfur compounds (including H₂S): 10 tpy~~

~~Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo p dioxins and dibenzofurans): 3.2 x 10⁻⁶ megagrams per year (3.5 x 10⁻⁶ tpy).~~

~~Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)~~

~~Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)~~

~~Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tpy)~~

<u>Pollutant</u>		<u>Emissions Rate (tons per year)</u>
<u>Carbon monoxide</u>		<u>100</u>
<u>Nitrogen oxides</u>		<u>40</u>
<u>Sulfur dioxide</u>		<u>40</u>
<u>Particulate matter:</u>	<u>Particulate matter emissions</u>	<u>25</u>
	<u>PM₁₀ emissions</u>	<u>15</u>
	<u>Direct PM_{2.5}</u>	<u>10</u>
	<u>Sulfur dioxide emissions</u>	<u>40</u>
	<u>Nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph (B)(44) of this section</u>	<u>40</u>
<u>Ozone:</u>	<u>Volatile organic compounds (VOCs)</u>	<u>40</u>
	<u>Nitrogen Oxides</u>	<u>40</u>
<u>Lead</u>		<u>0.6</u>
<u>Fluorides</u>		<u>3</u>
<u>Sulfuric acid mist</u>		<u>7</u>
<u>Hydrogen sulfide (H₂S)</u>		<u>10</u>
<u>Total reduced sulfur (including H₂S)</u>		<u>10</u>
<u>Reduced sulfur compounds (including H₂S)</u>		<u>10</u>
<u>Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):</u>		<u>3.2 x 10⁻⁶ megagrams per year (3.5 x 10⁻⁶ tons per year)</u>
<u>Municipal waste combustor metals (measured as particulate matter)</u>		<u>14 megagrams per year (15 tons per year)</u>
<u>Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)</u>		<u>36 megagrams per year (40 tons per year)</u>
<u>Municipal solid waste landfills emissions (measured as nonmethane organic compounds)</u>		<u>45 megagrams per year (50 tons per year)</u>

(ii)(b) **“Significant”** means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(49)(i)(B)(49)(a), does not list, any emissions rate.

(iii)(c) Notwithstanding paragraph (b)(49)(i)(B)(49)(a), significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³, (twenty-four (24)-hour average).

(50) **“Significant emissions increase”** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(B)(49)) for that pollutant.

(51) **“Stationary source”** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(52) **“Temporary clean coal technology demonstration project”** means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plans for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(53) **“Volatile organic compounds (VOC)”** is as defined in Regulation 61-62.1, Section (I), Definitions.

(e)(C) Ambient air increments.

(1) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
PM _{2.5} :	annual arithmetic mean	1
	24-hr maximum	2
PM ₁₀ :	annual arithmetic mean	4
	24-hr maximum	8
Sulfur dioxide:	annual arithmetic mean	2
	24-hr maximum	5
	3-hr maximum	25
Nitrogen dioxide:	annual arithmetic mean	2.5

CLASS II		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
PM _{2.5} :	annual arithmetic mean	4
	24-hr maximum	9
PM ₁₀ :	annual arithmetic mean	17
	24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Nitrogen dioxide:	annual arithmetic mean	25

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
PM _{2.5} :	annual arithmetic mean	8
	24-hr maximum	18
PM ₁₀ :	annual arithmetic mean	34
	24-hr maximum	60
Sulfur dioxide:	annual arithmetic mean	40

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
	24-hr maximum	182
	3-hr maximum	700
Nitrogen dioxide:	annual arithmetic mean	50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

~~(d)~~**(D) Ambient air ceilings.** No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

~~(e)~~**(E) Restrictions on area classifications.**

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

~~(i)~~**(a)** International parks;

~~(ii)~~**(b)** National wilderness areas which exceed 5,000 acres in size;

~~(iii)~~**(c)** National memorial parks which exceed 5,000 acres in size; and

~~(iv)~~**(d)** National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

~~(i)~~**(a)** An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

~~(ii)~~**(b)** A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

~~(f)~~**(F) [Reserved]**

~~(g)~~**(G) Redesignation.**

(1) All areas (except as otherwise provided under paragraph ~~(e)~~(E)) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph ~~(e)~~(E)) may be proposed by the respective states or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State Implementation Plan.

(2) The state may submit to the Administrator a proposal to redesignate areas of the state Class I or Class II provided that:

~~(i)~~(a) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

~~(ii)~~(b) Other states, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least thirty (30) days prior to the public hearing;

~~(iii)~~(c) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

~~(iv)~~(d) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the state has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of sixty (60) days) to confer with the state respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the state shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

~~(v)~~(e) The state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph ~~(e)~~(E) refers may be redesignated as Class III if –

~~(i)~~(a) The redesignation would meet the requirements of paragraph ~~(e)~~(G)(2);

~~(ii)~~(b) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless state law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

~~(iii)~~(c) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and

~~(iv)~~(d) Any permit application for any major stationary source or major modification, subject to review under paragraph ~~(f)~~(L), which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Department a proposal to redesignate areas Class I, Class II, or Class III; ~~Provided, That~~provided that:

~~(i)~~(a) The Indian Governing Body has followed procedures equivalent to those required of a state under paragraphs ~~(g)~~(G)(2), ~~(g)~~(3)~~(iii)~~(G)(3)(c), and ~~(g)~~(3)~~(iv)~~(G)(3)(d); and

~~(ii)~~(b) Such redesignation is proposed after consultation with the state(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within ninety (90) days of submission, a proposed redesignation of any area only if it is found, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph ~~(e)~~(E). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the state or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

~~(h)~~(H) **Stack heights.**

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by;

~~(i)~~(a) So much of the stack height of any source as exceeds good engineering practice; or

~~(ii)~~(b) Any other dispersion technique.

(2) Paragraph ~~(h)~~(H)(1) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

~~(i)~~(I) **Exemptions.**

(1) The requirements of paragraphs ~~(j)~~(J) through ~~(r)~~(R) shall not apply to a particular major stationary source or major modification, if:

~~(i)~~(a) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

~~(ii)~~(b) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

~~(a)~~(i) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

~~(b)~~(ii) Commenced construction before March 19, 1979; and

~~(c)~~(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

~~(iii)~~(c) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

~~(iv)~~(d) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

~~(a)~~(i) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

~~(b)~~(ii) Commenced construction before March 19, 1979; and

~~(e)~~(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

~~(v)~~(e) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

~~(a)~~(i) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

~~(b)~~(ii) Commenced construction within eighteen (18) months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

~~(e)~~(iii) Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable time; or

~~(vi)~~(f) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

~~(vii)~~(g) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

~~(a)~~(i) Coal cleaning plants (with thermal dryers);

~~(b)~~(ii) Kraft pulp mills;

~~(e)~~(iii) Portland cement plants;

~~(d)~~(iv) Primary zinc smelters;

~~(e)~~(v) Iron and steel mills;

~~(f)~~(vi) Primary aluminum ore reduction plants;

~~(g)~~(vii) Primary copper smelters;

~~(h)~~(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

~~(i)~~(ix) Hydrofluoric, sulfuric, or nitric acid plants;

~~(j)~~(x) Petroleum refineries;

~~(k)~~(xi) Lime plants;

~~(l)~~(xii) Phosphate rock processing plants;

~~(m)~~(xiii) Coke oven batteries;

~~(n)~~(xiv) Sulfur recovery plants;

~~(o)~~(xv) Carbon black plants (furnace process);

~~(p)~~(xvi) Primary lead smelters;

~~(q)~~(xvii) Fuel conversion plants;

~~(r)~~(xviii) Sintering plants;

~~(s)~~(xix) Secondary metal production plants;

~~(t)~~(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

~~(u)~~(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

~~(v)~~(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

~~(w)~~(xxiii) Taconite ore processing plants;

~~(x)~~(xxiv) Glass fiber processing plants;

~~(y)~~(xxv) Charcoal production plants;

~~(z)~~(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

~~(aa)~~(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act; or

~~(viii)~~(h) The source is a portable stationary source which has previously received a permit under this section, and:

~~(a)~~(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

~~(b)~~(ii) The emissions from the source would not exceed its allowable emissions; and

~~(e)~~(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

~~(d)~~(iv) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

~~(i)~~(i) The source or modification was not subject to 40 CFR 52.21 with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

~~(a)~~(i) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;

~~(b)~~(ii) Commenced construction within eighteen (18) months after July 31, 1987, or any earlier time required under the State Implementation Plan; and

~~(e)~~(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.

~~(x)~~(j) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this section before that date, and the Department subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs ~~(j)~~(J) through ~~(r)~~(R) that were in effect before July 31, 1987, shall apply to such source or modification.

(2) The requirements of paragraphs ~~(j)~~(J) through ~~(r)~~(R) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under ~~section~~Section 107 of the Clean Air Act.

(3) The requirements of paragraphs ~~(k)~~(K), ~~(m)~~(M), and ~~(o)~~(O) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

~~(i)~~(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

~~(i)~~(b) Would be temporary.

(4) The requirements of paragraphs ~~(k)~~(K), ~~(m)~~(M), and ~~(o)~~(O) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than fifty (50) ~~tpy~~ tons per year.

(5) The Department may exempt a stationary source or modification from the requirements of paragraph ~~(m)~~(M), with respect to monitoring for a particular pollutant if:

(i)(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide 575 $\mu\text{g}/\text{m}^3$, 8 hour average;
 Nitrogen dioxide 14 $\mu\text{g}/\text{m}^3$, annual average;
 Particulate matter 10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24 hour average;
 Sulfur dioxide 13 $\mu\text{g}/\text{m}^3$, 24 hour average;
 Ozone;¹
 Lead 0.1 $\mu\text{g}/\text{m}^3$, 3 month average;
 Fluorides 0.25 $\mu\text{g}/\text{m}^3$, 24 hour average;
 Total reduced sulfur 10 $\mu\text{g}/\text{m}^3$, 1 hour average;
 Hydrogen sulfide 0.2 $\mu\text{g}/\text{m}^3$, 1 hour average;
 Reduced sulfur compounds 10 $\mu\text{g}/\text{m}^3$, 1 hour average; or

<u>Pollutant</u>	<u>Concentration</u>	<u>Averaging Period</u>
<u>Carbon monoxide</u>	<u>575 $\mu\text{g}/\text{m}^3$</u>	<u>8-hour average</u>
<u>Nitrogen dioxide</u>	<u>14 $\mu\text{g}/\text{m}^3$</u>	<u>annual average</u>
<u>PM₁₀</u>	<u>10 $\mu\text{g}/\text{m}^3$</u>	<u>24-hour average</u>
<u>Sulfur dioxide</u>	<u>13 $\mu\text{g}/\text{m}^3$</u>	<u>24-hour average</u>
<u>Ozone;¹</u>		
<u>Lead</u>	<u>0.1 $\mu\text{g}/\text{m}^3$</u>	<u>3-month average</u>
<u>Fluorides</u>	<u>0.25 $\mu\text{g}/\text{m}^3$</u>	<u>24-hour average</u>
<u>Total reduced sulfur</u>	<u>10 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average</u>
<u>Hydrogen sulfide</u>	<u>0.2 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average</u>
<u>Reduced sulfur compounds</u>	<u>10 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average; or</u>

¹ No de minimis air quality level is provided for ozone. However, any net emissions increase of one hundred (100) tons per year or more of VOCs or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(i)(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i)(1)(5)(a), or the pollutant is not listed in paragraph (i)(5)(i)(1)(5)(a).

(6) The requirements for BACT in paragraph (j)(J) and the requirements for air quality analyses in paragraph (m)(M)(1), shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Department subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(i)(a) The requirements for air quality monitoring in paragraphs (m)(1)(i)(M)(1)(b) through (iv)(M)(1)(d) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the

application as submitted before that date was complete with respect to the requirements of this regulation other than those in paragraphs ~~(m)(1)(ii)(M)(1)(b)~~ through ~~(iv)(M)(1)(d)~~, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

~~(ii)(b)~~ The requirements for air quality monitoring in paragraphs ~~(m)(1)(ii)(M)(1)(b)~~ through ~~(iv)(M)(1)(d)~~ shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs ~~(m)(1)(ii)(M)(1)(b)~~ through ~~(iv)(M)(1)(d)~~.

(8)~~(i)(a)~~ At the discretion of the Department, the requirements for air quality monitoring of PM₁₀ in paragraphs ~~(m)(1)(i)(M)(1)(a)~~ through ~~(m)(1)(iv)(M)(1)(d)~~ may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs ~~(m)(1)(i)(M)(1)(a)~~ through ~~(iv)(M)(1)(d)~~.

~~(ii)(b)~~ The requirements for air quality monitoring of PM₁₀ in paragraphs ~~(m)(M)(1)~~, ~~(m)(1)(ii)(M)(1)(b)~~, ~~(m)(1)(iv)(M)(1)(d)~~, and ~~(m)(M)(3)~~ shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph ~~(m)(1)(viii)(M)(1)(h)~~, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph ~~(m)(1)(iii)(M)(1)(c)~~ requires shall have been gathered over a shorter period.

(9) The requirements of paragraph ~~(k)(K)(2)~~ shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Department subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph ~~(k)(K)(2)~~ shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if:

~~(i)(a)~~ The owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM₁₀ took effect in an implementation plan to which this section applies; and

~~(ii)(b)~~ The Department subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph ~~(k)(K)(2)~~ shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(11) The requirements of Section (K) shall not apply to a permit application for a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015, if:

(a) The Department has determined the permit application subject to this section to be complete on or before October 1, 2015. Instead, the requirements in Section (K) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Department determined the permit application to be complete; or

(b) The Department has first published before December 28, 2015, a public notice of a preliminary determination or draft permit for the permit application subject to this section. Instead, the requirements in Section (K) shall apply with respect to the national ambient air quality standards for ozone in effect on the date the Department first published a public notice of a preliminary determination or draft permit.

~~(J)~~(J) Control technology review.

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

~~(K)~~(K) Source impact analysis.

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any National Ambient Air Quality Standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

~~(L)~~(L) Air quality models.

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or

substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph ~~(q)~~(Q).

~~(m)~~**(M) Air quality analysis.**

(1) Preapplication analysis.

~~(i)~~(a) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

~~(a)~~(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

~~(b)~~(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

~~(ii)~~(b) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

~~(iii)~~(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

~~(iv)~~(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

~~(v)~~(e) For any application which becomes complete, except as to the requirements of paragraphs ~~(m)~~(1)(iii)(M)(1)(c) and ~~(iv)~~(M)(1)(d), between June 8, 1981, and February 9, 1982, the data that paragraph ~~(m)~~(1)(iii)(M)(1)(c), requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

~~(a)~~(i) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

~~(b)~~(ii) If the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph ~~(m)~~(1)(iii)(M)(1)(c), requires shall have been gathered over at least that shorter period.

~~(e)~~(iii) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Department may waive the otherwise applicable requirements of this paragraph ~~(v)~~(M)(1)(e) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

~~(vi)~~(f) The owner or operator of a proposed stationary source or modification of VOCs who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph ~~(m)~~(M)(1).

~~(vii)~~(g) For any application that becomes complete, except as to the requirements of paragraphs ~~(m)~~(1)(iii)(M)(1)(c) and ~~(iv)~~(M)(1)(d) pertaining to PM₁₀, after December 1, 1988, and no later than August 1, 1989, the data that paragraph ~~(m)~~(1)(iii)(M)(1)(c) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph ~~(m)~~(1)(iii)(M)(1)(c) requires shall have been gathered over that shorter period.

~~(viii)~~(h) With respect to any requirements for air quality monitoring of PM₁₀ under paragraphs ~~(i)~~(11)(i)(L)(11)(a) and ~~(ii)~~(L)(11)(b), the owner or operator of the source or modification shall use a monitoring method approved by the Department and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Department.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 of during the operation of monitoring stations for purposes of satisfying paragraph ~~(m)~~(M).

~~(n)~~(N) **Source information.**

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs ~~(j)~~(J), ~~(l)~~(L), ~~(n)~~(N), and ~~(p)~~(P) apply, such information shall include:

~~(i)~~(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

~~(ii)~~(b) A detailed schedule for construction of the source or modification;

~~(iii)~~(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that BACT would be applied.

(2) Upon request of the Department, the owner or operator shall also provide information on:

~~(i)~~(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

~~(ii)~~(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

~~(o)~~**(O) Additional impact analyses.**

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The Department may require monitoring of visibility in any Class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

~~(p)~~**(P) Sources impacting Federal Class I areas - additional requirements.**

(1) Notice to Federal Land Managers. The Department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The Department shall also provide the Federal Land Manager and such federal officials with a copy of the preliminary determination required under paragraph ~~(q)~~(Q), and shall make available to them any materials used in making that determination, promptly after the Department makes such determination. Finally, the Department shall also notify all affected Federal Land Managers within thirty (30) days of receipt of any advance notification of any such permit application.

(2) Federal Land Manager. The Federal Land Manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Department, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The Department shall consider any analysis performed by the Federal Land Manager, provided within thirty (30) days of the notification required by paragraph ~~(p)~~(P)(1), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Class I area. Where the Department finds that such an analysis does not demonstrate to the satisfaction of the Department that an adverse impact on visibility will result in the Federal Class I area, the Department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial- impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or

contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, then the permit shall not be issued.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies, the state may authorize the Administrator: ~~Provided, That, provided that~~ the applicable requirements of this regulation are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
PM _{2.5} :	annual arithmetic mean	4
	24-hr maximum	9
PM ₁₀ :	annual arithmetic mean	17
	24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	325
Nitrogen dioxide:	annual arithmetic mean	25

(6) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph ~~(q)(Q)(4)~~ may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Department shall issue a permit to such source or modification pursuant to the requirements of paragraph ~~(q)(Q)(7)~~: Provided, provided that the applicable requirements of this regulation are otherwise met.

(7) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if it is found that the variance is in the national interest. If the variance is approved, the Department shall issue a permit pursuant to the requirements of paragraph ~~(q)(Q)(7)~~: Provided, provided that the applicable requirements of this regulation are otherwise met.

(8) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to paragraph ~~(q)(Q)(5)~~ or ~~(q)(Q)(6)~~ the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations

which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (Micrograms per cubic meter)		
Period of exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q)(Q) Public participation.

(1) Within thirty (30) days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, Environmental Protection Fees, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(i)(a) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(ii)(b) Make available in at least one location in each region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on a public website identified by the Department.

~~(iii)(c) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. Alternatively, these notifications may be made on a public website identified by the Department. However, the Department's selected notification method (i.e., either newspaper or website), known as the "consistent noticing method," shall be used for all permits subject to notice under this section and may, when appropriate, be supplemented by other noticing methods on individual permits. If the Department selects website notice as its consistent noticing method, the notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by~~

publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).

~~(iv)~~(d) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any state, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

~~(v)~~(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

~~(vi)~~(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same location or on the same website where the Department made available preconstruction information relating to the proposed source or modification.

~~(vii)~~(g) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

~~(viii)~~(h) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same website where the Department made available preconstruction information and public comments relating to the source or modification.

~~(ix)~~(i) Notify EPA of every action related to the consideration of the permit.

(3) The requirements of Section ~~(q)~~(Q), Public Participation, of this standard shall not apply to any major plant or major modification which Section ~~(j)~~(J), Exemptions, would exempt from the requirements of Sections ~~(k)~~(K), ~~(m)~~(M), and ~~(o)~~(O), but only to the extent that, with respect to each of the criteria for construction approval under the South Carolina State Implementation Plan and for exemption under Section ~~(j)~~(J), requirements providing the public with at least as much participation in each material determination as those of Section ~~(q)~~(Q) have been met in the granting of such construction approval.

~~(r)~~(R) **Source obligation.**

In addition to all other applicable requirements specified in this regulation, the owner or operator shall comply with the requirements of paragraphs ~~(r)~~(R)(1) through ~~(r)~~(R)(8).

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the

eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs ~~(j)~~(J) through ~~(r)~~(R) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) Reserved

(6) Monitoring, recordkeeping and reporting. The provisions of this paragraph ~~(r)~~(R)(6) apply ~~to~~ with respect to any regulated NSR pollutant emitted from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs ~~(b)(41)(ii)(a)~~(B)(41)(b)(i) through ~~(e)~~(B)(41)(b)(iii) for calculating projected actual emissions.

~~(i)~~(a) If the project requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements," the owner or operator shall provide a copy of the information set out in paragraph ~~(r)~~(6)(ii)(R)(6)(b) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II, "Permit Requirements," is not required, the owner or operator shall maintain the information set out in paragraph ~~(r)~~(6)(ii)(R)(6)(b).

~~(ii)~~(b) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

~~(a)~~(i) A description of the project;

~~(b)~~(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

~~(e)~~(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph ~~(b)(41)(ii)(e)~~(B)(41)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(c) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (R)(6)(b) of this section to the Department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Department before beginning actual construction.

~~(iii)~~(d) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph

~~(r)(6)(ii)(b)(R)(6)(b)(ii)~~; and calculate and maintain a record of the annual emissions, in ~~tpy tons per year~~ on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

~~(iv)(e)~~ If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within sixty (60) days after the end of each year during which records must be generated under paragraph ~~(r)(6)(iii)(R)(6)(d)~~ setting out the unit's annual emissions during the calendar year that preceded submission of the report.

~~(v)(f)~~ If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in ~~tpy tons per year~~, from the project identified in paragraph ~~(r)(6)(ii)(R)(6)(b)~~, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph ~~(r)(6)(ii)(e)(R)(6)(b)(iii)~~), by a significant amount (as defined in paragraph ~~(b)(B)(49)~~) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph ~~(R)(6)(b)(iii)(r)(6)(ii)(e)~~. Such report shall be submitted to the Department within sixty (60) days after the end of such year. The report shall contain the following:

~~(a)(i)~~ The name, address and telephone number of the major stationary source;

~~(b)(ii)~~ The annual emissions as calculated pursuant to paragraph ~~(r)(6)(iii)(R)(6)(d)~~; and

~~(e)(iii)~~ Any other information needed to make a compliance determination (for example, an explanation as to why the emissions differ from the preconstruction projection).

(g) A "reasonable possibility" under paragraph (R)(6) of this section occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(50) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(41)(b)(iii) of this section, sums to at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(50) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (R)(6)(g)(ii) of this section, and not also within the meaning of paragraph (R)(6)(g)(i) of this section, then provisions (R)(6)(c) through (R)(6)(f) do not apply to the project.

(7) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements", the owner or operator shall provide notification of source status as part of the permit application to the Department.

(8) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph ~~(r)(R)(6)~~ available for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

~~(s)(S) through (u)(U)(3) [Reserved]~~

~~(u)~~(U)(4) In the case of a source or modification which proposes to construct in a Class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a Class II area, and where no standard under Section 111 of the Clean Air Act has been promulgated for such source category, the Administrator must approve the determination of BACT as set forth in the permit.

~~(v)~~(V) **Innovative control technology.**

(1) An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Department shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

~~(i)~~(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

~~(ii)~~(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph ~~(j)~~(J)(2), by a date specified by the Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

~~(iii)~~(c) The source or modification would meet the requirements of paragraphs ~~(j)~~(J) and ~~(k)~~(K), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

~~(iv)~~(d) The source or modification would not before the date specified by the Department:

~~(a)~~(i) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

~~(b)~~(ii) Impact any area where an applicable increment is known to be violated; and

~~(v)~~(e) All other applicable requirements including those for public participation have been met.

~~(vi)~~(f) The provisions of paragraph ~~(p)~~(P) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The Department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

~~(i)~~(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

~~(ii)~~(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

~~(iii)~~(c) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph ~~(v)~~(V)(3), the Department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

~~(w)~~(W) **Permit rescission.**

(1) Any permit issued under this section or a prior version of this regulation shall remain in effect, unless and until it expires or is rescinded under this paragraph ~~(w)~~(W).

(2) Any owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph ~~(w)~~(W)(3) of this section may request that the Department rescind the permit or a particular portion of the permit.

(3) The Department may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Department rescinds a permit under this paragraph, the Department shall post a notice of the rescission determination on a public website identified by the Department within sixty (60) days of the rescission.

~~(x)~~(X) [Reserved]

~~(y)~~(Y) [Reserved]

~~(z)~~(Z) [Reserved]

~~(aa)~~(AA) **Actuals PALs.** The provisions in paragraphs ~~(aa)~~(AA)(1) through ~~(aa)~~(AA)(15) govern actuals PALs.

(1) **Applicability.**

~~(i)~~(a) The Department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs ~~(aa)~~(AA)(1) through ~~(aa)~~(AA)(15). The term “PAL” shall mean “actuals PAL” throughout ~~paragraph (aa)~~ Section (AA).

~~(ii)~~(b) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs ~~(aa)~~(AA)(1) through ~~(aa)~~(AA)(15), and complies with the PAL permit:

~~(a)~~(i) Is not a major modification for the PAL pollutant;

~~(b)~~(ii) Does not have to be approved through Regulation 61-62.5, Standard 7, Prevention of Significant Deterioration. However, the change will be reviewed through ~~R-Regulation~~ 61-62.1, Section II, ~~A-~~Permit Requirements; and

~~(c)~~(iii) Is not subject to the provisions in paragraph ~~(r)~~(R)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

~~(iii)(c)~~ Except as provided under paragraph ~~(aa)(1)(ii)(e)(AA)(1)(b)(iii)~~, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) **Definitions.** The definitions in paragraphs ~~(aa)(2)(i)(AA)(2)(a)~~ through ~~(aa)(2)(xi)(AA)(2)(k)~~ shall apply to actual PALs consistent with paragraphs ~~(aa)(AA)(1)~~ through ~~(aa)(AA)(15)~~. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph ~~(b)(B)~~ or in the Clean Air Act.

~~(i)(a)~~ **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph ~~(b)(B)(4)~~) of all emissions units (as defined in paragraph ~~(b)(B)(20)~~) at the source, that emit or have the potential to emit the PAL pollutant.

~~(ii)(b)~~ **“Allowable emissions”** means “allowable emissions” as defined in paragraph ~~(b)(B)(3)~~, except as this definition is modified according to paragraphs ~~(aa)(2)(ii)(a)(AA)(2)(b)(i)~~ and ~~(aa)(2)(ii)(b)(AA)(2)(b)(ii)~~.

~~(a)(i)~~ The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

~~(b)(ii)~~ An emissions unit’s potential to emit shall be determined using the definition in paragraph ~~(b)(B)(37)~~, except that the words "or enforceable as a practical matter" should be added after “federally enforceable.”

~~(iii)(c)~~ **“Small emissions unit”** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph ~~(b)(B)(49)~~ or in the Clean Air Act, whichever is lower.

~~(iv)(d)~~ **“Major emissions unit”** means:

~~(a)(i)~~ Any emissions unit that emits or has the potential to emit one hundred (100) tpy tons per year or more of the PAL pollutant in an attainment area; or

~~(b)(ii)~~ Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit fifty (50) or more tons of VOC per year.

~~(v)(e)~~ **“Plantwide applicability limitation (PAL)”** means an emission limitation expressed in tpy tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs ~~(aa)(AA)(1)~~ through ~~(aa)(AA)(15)~~.

~~(vi)(f)~~ **“PAL effective date”** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

~~(vii)(g)~~ **“PAL effective period”** means the period beginning with the PAL effective date and ending ten (10) years later.

~~(viii)~~(h) **“PAL major modification”** means, notwithstanding paragraphs ~~(b)~~(B)(30) and ~~(b)~~(B)(34) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

~~(ix)~~(i) **“PAL permit”** means the major NSR permit, the minor NSR permit, or the state operating permit under Regulation 61-62.1, Section II.G, or the Title V permit issued by the Department that establishes a PAL for a major stationary source.

~~(x)~~(j) **“PAL pollutant”** means the pollutant for which a PAL is established at a major stationary source.

~~(xi)~~(k) **“Significant emissions unit”** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph ~~(b)~~(B)(49) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph ~~(aa)~~(2)(iv)(AA)(2)(d).

(3) **Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

~~(i)~~(a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

~~(ii)~~(b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

~~(iii)~~(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12)-month rolling total for each month as required by paragraph ~~(aa)~~(13)(i)(AA)(13)(a).

(4) **General requirements for establishing PALs.**

~~(i)~~(a) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs ~~(aa)~~(4)(i)(a)(AA)(4)(a)(i) through ~~(aa)~~(4)(i)(g)(AA)(4)(a)(vii) are met.

~~(a)~~(i) The PAL shall impose an annual emission limitation in tpy tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve (12)-month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

~~(b)~~(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph ~~(aa)~~(AA)(5).

~~(e)~~(iii) The PAL permit shall contain all the requirements of paragraph ~~(aa)~~(AA)(7).

~~(d)(iv)~~ The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

~~(e)(v)~~ Each PAL shall regulate emissions of only one pollutant.

~~(f)(vi)~~ Each PAL shall have a PAL effective period of ten (10) years.

~~(g)(vii)~~ The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs ~~(aa)(AA)(12)~~ through ~~(aa)(AA)(14)~~ for each emissions unit under the PAL through the PAL effective period.

~~(ii)(b)~~ At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with ~~section~~Section ~~(q)(Q)~~ “Public Participation” of this regulation. This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment. The Department must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

~~(i)(a)~~ Except as provided in paragraph ~~(aa)(6)(ii)(AA)(6)(b)~~, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph ~~(b)(B)(4)~~) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph ~~(b)(B)(49)~~ or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four (24)-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this twenty-four (24)-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in ~~tpy~~ tons per year) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Department is aware of prior to the issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) parts per million (ppm) NO_x to a new rule limit of thirty (30) ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

~~(ii)(b)~~ For newly constructed units (which do not include modification to existing units) on which actual construction began after the twenty-four (24)-month period, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in paragraphs ~~(aa)(7)(i)(AA)(7)(a)~~ through ~~(aa)(7)(x)(AA)(7)(j)~~.

~~(i)(a)~~ The PAL pollutant and the applicable source-wide emission limitation in ~~tpy~~ tons per year.

~~(ii)(b)~~ The PAL permit effective date and the expiration date of the PAL (PAL effective period).

~~(iii)~~(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph ~~(aa)~~(AA)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

~~(iv)~~(d) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

~~(v)~~(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph ~~(aa)~~(AA)(9).

~~(vi)~~(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12)-month rolling total as required by paragraph ~~(aa)~~(13)~~(i)~~(AA)(13)(a).

~~(vii)~~(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph ~~(aa)~~(AA)(12).

~~(viii)~~(h) A requirement to retain the records required under paragraph ~~(aa)~~(AA)(13) on site. Such records may be retained in an electronic format.

~~(ix)~~(i) A requirement to submit the reports required under paragraph ~~(aa)~~(AA)(14) by the required deadlines.

~~(x)~~(j) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs ~~(aa)~~(8)~~(i)~~(AA)(8)(a) and ~~(aa)~~(8)~~(ii)~~(AA)(8)(b) apply to actuals PALs.

~~(i)~~(a) **PAL effective period.** The Department shall specify a PAL effective period of ten (10) years.

~~(ii)~~(b) **Reopening of the PAL permit.**

~~(a)~~(i) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph ~~(aa)~~(AA)(11).

~~(b)~~(ii) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Class I area by a Federal Land Manager and for which information is available to the general public.

~~(e)(iii)~~ Except for the permit reopening in paragraph ~~(aa)(8)(ii)(a)(1)(AA)(8)(b)(i)(1)~~ for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph ~~(aa)(AA)(5)~~.

(9) **Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in paragraph ~~(aa)(10)(AA)(10)~~ shall expire at the end of the PAL effective period, and the requirements in paragraphs ~~(aa)(9)(i)(AA)(9)(a)~~ through ~~(aa)(9)(v)(AA)(9)(e)~~ shall apply.

~~(i)(a)~~ Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs ~~(aa)(9)(i)(a)(AA)(9)(a)(i)~~ and ~~(aa)(9)(i)(b)(AA)(9)(a)(ii)~~.

~~(a)(i)~~ Within the time frame specified for PAL renewals in paragraph ~~(aa)(10)(ii)(AA)(10)(b)~~, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph ~~(aa)(10)(v)(AA)(10)(e)~~, such distribution shall be made as if the PAL had been adjusted.

~~(b)(ii)~~ The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

~~(ii)(b)~~ Each emissions unit(s) shall comply with the allowable emission limitation on a twelve (12)-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

~~(iii)(c)~~ Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph ~~(aa)(9)(i)(b)(AA)(9)(a)(ii)~~, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

~~(iv)(d)~~ Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph ~~(b)(B)(30)~~.

~~(v)(e)~~ The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established

pursuant to paragraph ~~(r)~~(R)(4), but were eliminated by the PAL in accordance with the provisions in paragraph ~~(aa)(1)(ii)(e)~~(AA)(1)(b)(iii).

(10) Renewal of a PAL.

~~(i)~~(a) The Department shall follow the procedures specified in paragraph ~~(aa)~~(AA)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

~~(ii)~~(b) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

~~(iii)~~(c) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs ~~(aa)(10)(iii)(a)~~(AA)(10)(c)(i) through ~~(aa)(10)(iii)(d)~~(AA)(10)(c)(iv).

~~(a)~~(i) The information required in paragraphs ~~(aa)(3)(i)~~(AA)(3)(a) through ~~(aa)(3)(iii)~~(AA)(3)(c).

~~(b)~~(ii) A proposed PAL level.

~~(e)~~(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

~~(d)~~(iv) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

~~(iv)~~(d) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs ~~(aa)(10)(iv)(a)~~(AA)(10)(d)(i) and ~~(aa)(10)(iv)(b)~~(AA)(10)(d)(ii). However, in no case may any such adjustment fail to comply with paragraph ~~(aa)(10)(iv)(e)~~(AA)(10)(d)(iii).

~~(a)~~(i) If the emissions level calculated in accordance with paragraph ~~(aa)~~(AA)(6) is equal to or greater than eighty (80) percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph ~~(aa)(10)(iv)(b)~~(AA)(10)(d)(ii); or

~~(b)~~(ii) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

~~(e)~~(iii) Notwithstanding paragraphs ~~(aa)(10)(iv)(a)~~(AA)(10)(d)(i) and ~~(aa)(10)(iv)(b)~~(AA)(10)(d)(ii):

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph ~~(aa)~~(AA)(11) (increasing a PAL).

~~(v)~~(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

~~(i)~~(a) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs ~~(aa)(11)(i)(a)~~(AA)(11)(a)(i) through ~~(aa)(11)(i)(d)~~(AA)(11)(a)(iv).

~~(a)~~(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

~~(b)~~(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

~~(e)~~(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph ~~(aa)(11)(i)(a)~~(AA)(11)(a)(i), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

~~(d)~~(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

~~(ii)~~(b) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph ~~(aa)(11)(i)(b)~~(AA)(11)(a)(ii)), plus the sum of the baseline actual emissions of the small emissions units.

~~(iii)~~(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph ~~(aa)~~(AA)(5).

(12) Monitoring requirements for PALs.

—~~(i)~~(a) General requirements.

~~(a)(i)~~ Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

~~(b)(ii)~~ The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs ~~(aa)(12)(ii)(a)(AA)(12)(b)(i)~~ through ~~(aa)(12)(ii)(d)(AA)(12)(b)(iv)~~ and must be approved by the Department.

~~(e)(iii)~~ Notwithstanding paragraph ~~(aa)(12)(i)(b)(AA)(12)(a)(ii)~~, the owner or operator may also employ an alternative monitoring approach that meets paragraph ~~(aa)(12)(i)(a)(AA)(12)(a)(i)~~ if approved by the Department.

~~(d)(iv)~~ Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

~~(ii)(b)~~ Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs ~~(aa)(12)(iii)(AA)(12)(c)~~ through ~~(aa)(12)(ix)(AA)(12)(b)(i)~~:

~~(a)(i)~~ Mass balance calculations for activities using coatings or solvents;

~~(b)(ii)~~ CEMS;

~~(e)(iii)~~ CPMS or PEMS; and

~~(d)(iv)~~ Emission factors.

~~(iii)(c)~~ Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

~~(a)(i)~~ Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

~~(b)(ii)~~ Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

~~(e)(iii)~~ Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

~~(iv)(d)~~ CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

~~(a)(i)~~ CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

~~(b)~~(ii) CEMS must sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.

~~(v)~~(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

~~(a)~~(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

~~(b)~~(ii) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

~~(vi)~~(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

~~(a)~~(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

~~(b)~~(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

~~(e)~~(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the Department determines that testing is not required.

~~(vii)~~(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

~~(viii)~~(h) Notwithstanding the requirements in paragraphs ~~(aa)(12)(iii)~~(AA)(12)(c) through ~~(aa)(12)(vii)~~(AA)(12)(g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

~~(a)~~(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

~~(b)~~(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

~~(ix)~~(i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every five (5) years after issuance of the PAL.

(13) Recordkeeping requirements.

~~(i)(a)~~ The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of ~~paragraph (aa)~~ Section (AA) and of the PAL, including a determination of each emissions unit's twelve (12)-month rolling total emissions, for five (5) years from the date of such record.

~~(ii)(b)~~ The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

~~(a)(i)~~ A copy of the PAL permit application and any applications for revisions to the PAL; and

~~(b)(ii)~~ Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with ~~the applicable title V operating permit program Regulation 61-62.70~~. The reports shall meet the requirements in paragraphs ~~(aa)(14)(i)(AA)(14)(a)~~ through ~~(aa)(14)(iii)(AA)(14)(c)~~.

~~(i)(a)~~ **Semi-annual report.** The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs ~~(aa)(14)(i)(a)(AA)(14)(a)(i)~~ through ~~(aa)(14)(i)(g)(AA)(14)(a)(vii)~~.

~~(a)(i)~~ The identification of owner and operator and the permit number.

~~(b)(ii)~~ Total annual emissions (tons/ per year) based on a twelve (12)-month rolling total for each month in the reporting period recorded pursuant to paragraph ~~(aa)(13)(i)(AA)(13)(a)~~.

~~(c)(iii)~~ All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

~~(d)(iv)~~ A list of any emissions units modified or added to the major stationary source during the preceding six (6)-month period.

~~(e)(v)~~ The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

~~(f)(vi)~~ A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by ~~(aa)(12)(vii)(AA)(12)(g)~~.

~~(g)(vii)~~ A signed statement by the responsible official (as defined by ~~the applicable title V operating permit program Regulation 61-62.70~~) certifying the truth, accuracy, and completeness of the information provided in the report.

~~(ii)(b)~~ **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

~~(a)~~(i) The identification of owner and operator and the permit number;

~~(b)~~(ii) The PAL requirement that experienced the deviation or that was exceeded;

~~(c)~~(iii) Emissions resulting from the deviation or the exceedance; and

~~(d)~~(iv) A signed statement by the responsible official (as defined by ~~the applicable title V operating permit program Regulation 61-62.70~~) certifying the truth, accuracy, and completeness of the information provided in the report.

~~(iii)~~(c) **Re-validation results.** The owner or operator shall submit to the Department the results of any re-validation test or method within three (3) months after completion of such test or method.

(15) Transition requirements.

~~(i)~~(a) The Department may not issue a PAL that does not comply with the requirements in paragraphs ~~(aa)~~(AA)(1) through ~~(aa)~~(AA)(15) after the date these provisions become effective.

~~(ii)~~(b) The Department may supersede any PAL that was established prior to the date these provisions become effective with a PAL that complies with the requirements of paragraphs ~~(aa)~~(AA)(1) through ~~(aa)~~(AA)(15).

~~(bb)~~(BB) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

61-62.5. Standard No. 7.1. Nonattainment New Source Review (NSR)

~~(a)~~(A) Applicability.

(1) This rule applies to all major stationary sources constructed or modified in any nonattainment area as designated in 40 Code of Federal Regulations (CFR) 81.341 ("nonattainment area") if the emissions from such facility will cause or contribute to concentrations of a regulated NSR pollutant (as defined in paragraph ~~(e)~~(13)(B)(32)) for which the nonattainment area was designated as nonattainment. Applicability to this regulation shall be based on the pollutant emission rate set out in paragraph ~~(e)~~(14)(B)(37) for only those pollutants for which the area's designation is based.

~~(A)~~(a) The requirements of ~~paragraph (d) this regulation~~ apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as provided in ~~paragraph (b) Section(A)(10)~~.

~~(B)~~(b) No new major stationary source or major modification to which the requirements of ~~paragraph (d) this regulation~~ apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(2) **Redesignation to attainment.** If any nonattainment area to which this regulation applies is later designated in 40 CFR 81.341 as attainment, all sources in that nonattainment area subject to this regulation before the redesignation date shall continue to comply with this regulation.

(3) For any area designated as nonattainment a major stationary source or major modification that is major for volatile organic compounds (VOCs) or ~~oxides of nitrogen~~ oxides is also major for ozone.

~~(b) Applicability procedures.~~

~~(1)(4)~~ Except as otherwise provided in paragraphs ~~(b)(7)(A)(9)~~, and consistent with the definition of major modification ~~contained as defined in paragraph (e)(6)(A)(B)(21)(a)~~, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph ~~(e)(15)(B)(38)~~, and a significant net emissions increase (as defined in paragraphs ~~(e)(8)(B)(24)~~ and ~~(15)(B)(37)~~). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

~~(2)(5)~~ The procedure for calculating, ~~(before beginning actual construction)~~, whether a significant emissions increase (the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs ~~(b)(1)(A)(6)~~ through ~~(6)(A)(8)~~. The procedure for calculating, ~~(before beginning actual construction)~~, whether a significant net emissions increase will occur at the major stationary source (the second step of the process) is contained in the definition in paragraph ~~(e)(8)(B)(24)~~. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

~~(3)(6)~~ **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph ~~(e)(11)(B)(31)~~) and the baseline actual emissions (as defined in paragraphs ~~(e)(2)(A)(B)(3)(a)~~ and ~~(B)(B)(3)(b)~~, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph ~~(e)(14)(B)(37)~~).

~~(4)(7)~~ **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph ~~(b)(37)~~ of Regulation 61-62.5 Standard 7, “~~Prevention of Significant Deterioration~~” (“~~Standard 7~~”) ~~(B)(27)~~) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph ~~(e)(2)(C)(B)(3)(c)~~) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph ~~(e)(14)(B)(37)~~).

~~(5)~~ [Reserved]

~~(6)(8)~~ **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs ~~(b)(3)(A)(6)~~ and ~~(4)(A)(7)~~ as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph ~~(e)(14)(B)(37)~~).

~~(7)(9)~~ For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with requirements under ~~paragraph~~ Section (4)(N)

(10) The provisions of this section shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

~~(e)(B) Definitions.~~ The following definitions apply to this Standard only. Any other term contained within this Standard is as defined where indicated in Regulation 61-62.5, Standard 7, Prevention of Significant Deterioration. For the purposes of this regulation:

~~(1)(A)(a)~~ “Actual emissions” means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs ~~(e)(1)(B)(B)(1)(b)~~ through ~~(D)(B)(1)(d)~~, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under ~~paragraph~~ Section (i)(N). Instead, paragraphs ~~(e)(2)(B)(3)~~ and ~~(e)(1)(B)(31)~~ shall apply for those purposes.

~~(B)(b)~~ In general, actual emissions as of a particular date shall equal the average rate, in tons per year ~~(tpy)~~, at which the unit actually emitted the pollutant during a consecutive twenty-four (24)-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

~~(C)(c)~~ The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

~~(D)(d)~~ For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(b) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

~~(3)(2)~~ “Baseline actual emissions” means the rate of emissions, in ~~tpy~~ tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs ~~(e)(2)(A)(B)(3)(a)~~ through ~~(D)(B)(3)(d)~~.

~~(A)(a)~~ For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in ~~tpy~~ tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the five (5)-year period immediately preceding when the owner or operator begins actual construction of the project. The

Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in ~~tpy~~ tons per year, and for adjusting this amount if required by paragraph ~~(e)(2)(A)(ii)(B)(3)(a)(ii)~~.

~~(B)(b)~~ For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in ~~tpy~~ tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the ten (10)-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required either under this section or under a plan approved by the Administrator whichever is earlier, except that the ten (10)-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the twenty-four (24)-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four (24)-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph ~~(d)(1)(e)(viii)(D)(7)~~.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in ~~tpy~~ tons per year, and for adjusting this amount if required by paragraphs ~~(e)(2)(B)(ii)(B)(3)(b)(ii)~~ and ~~(iii)(B)(3)(b)(iii)~~.

~~(C)(c)~~ For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

~~(D)(d)~~ For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph ~~(e)(2)(A)(B)(3)(a)~~, for other existing emissions units in accordance with the procedures contained in paragraph ~~(e)(2)(B)(B)(3)(b)~~, and for a new emissions unit in accordance with the procedures contained in paragraph ~~(e)(2)(C)(B)(3)(c)~~.

(4) **Begin actual construction** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

~~(3)(5)~~ **“Best available control technology (BACT)”** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

~~(4)~~ [Reserved]

(6)(a) **Building, structure, facility, or installation** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(b) Notwithstanding the provisions of paragraph (B)(6)(a), building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within one-fourth (1/4) of a mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas

dehydrators, or emissions control devices. Surface site, as used in this paragraph, has the same meaning as in 40 CFR 63.761.

(7) **Temporary clean coal technology demonstration project** means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(8) **Clean coal technology** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(9) **Clean coal technology demonstration project** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall lie at least twenty (20) percent of the total cost of the demonstration project.

(10) **Commence** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(11) **Construction** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(12) **Continuous emissions monitoring system (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(13) **Continuous emissions rate monitoring system (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(14) **Continuous parameter monitoring system (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(15) **Electric utility steam generating unit** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would

produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(16) **Emissions unit** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (B)(15) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (B)(16)(a) and (B)(16)(b) of this section.

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two (2) years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (B)(16)(a) of this section. A replacement unit, as defined in paragraph (B)(33), is an existing emissions unit.

(17) **Federal Land Manager** means, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(18) **Federally enforceable** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(19) **Fugitive emissions** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(5)~~(20) **“Lowest achievable emission rate (LAER)”**² means, for any source, the more stringent rate of emissions based on the following:

~~(A)~~(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

~~(B)~~(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within ~~a~~ the stationary source. In no event shall the application of the term ~~permit allow~~ a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

~~(6)~~(A)(21)(a) **“Major modification”** means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph ~~(e)~~(13)(B)(32)); and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

~~(B)~~(b) Any significant emissions increase (as defined in paragraph ~~(e)~~(15)(B)(38)) from any emissions units or net emissions increase (as defined in paragraph ~~(e)~~(8)(B)(24)) at a major stationary source that is

significant for volatile organic compounds or ~~oxides of nitrogen~~ oxides shall be considered significant for ozone.

~~(C)~~(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under ~~sections~~Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under section~~Section~~ 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which;

~~(a)~~(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or Section 51.166; or

~~(2)~~(b) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) [Reserved]

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

~~(a)~~(1) The South Carolina State Implementation Plan, and

~~(b)~~(2) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard (NAAQS) during the project and after it is terminated.

~~(D)~~(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under ~~paragraph~~Section (i)~~N~~ for a PAL for that pollutant. Instead, the definition at paragraph ~~(i)~~(2)~~(viii)~~(N)(2)(h) shall apply.

(e) [Reserved]

~~(7)(A)~~(22)(a) **“Major stationary source”** means:

(i) Any stationary source of air pollutants ~~which that~~ emits, or has the potential to emit, one-hundred (100) tpy tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Clean Air Act, according to ~~paragraphs (e)(7)(A)(i)(a) through (e) of this section.~~ the following table:

~~———— (a) 50 tpy of volatile organic compounds or oxides of nitrogen in any serious ozone nonattainment area.~~

~~———— (b) 50 tpy of volatile organic compounds or oxides of nitrogen in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.~~

~~———— (c) 25 tpy of volatile organic compounds or oxides of nitrogen in any severe ozone nonattainment area.~~

~~———— (d) 10 tpy of volatile organic compounds or oxides of nitrogen in any extreme ozone nonattainment area, or~~

Nonattainment Area Classification	NO _x	VOC	CO	SO ₂	PM ₁₀	PM _{2.5}
	<i>All values expressed in tons per year</i>					
<u>Ozone: Marginal and Moderate</u>	<u>100</u>	<u>100</u>				
<u>Ozone: Serious</u>	<u>50</u>	<u>50</u>				
<u>Ozone: Severe</u>	<u>25</u>	<u>25</u>				
<u>Ozone: Extreme</u>	<u>10</u>	<u>10</u>				
<u>CO</u>			<u>100</u>			
<u>CO: Serious, where stationary sources contribute significantly to CO levels</u>			<u>50</u>			
<u>PM₁₀</u>					<u>100</u>	
<u>PM₁₀: Serious</u>					<u>70</u>	
<u>PM_{2.5}</u>	<u>100</u>	<u>100</u>		<u>100</u>		<u>100</u>
<u>PM_{2.5} in any serious nonattainment area for PM_{2.5}.</u>	<u>70</u>	<u>70</u>		<u>70</u>		<u>70</u>
<u>SO₂</u>				<u>100</u>		
<u>NO_x</u>	<u>100</u>					

(ii) Any physical change that would occur at a stationary source not qualifying under paragraph ~~(e)(7)(A)(i)(B)(22)(a)~~ as a major stationary source, if the change would constitute a major stationary source by itself.

~~(B)(b)~~ A major stationary source that is major for volatile organic compounds or ~~Nitrogen-nitrogen~~ oxides shall be considered major for ozone.

~~(C)(c)~~ The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under ~~section~~Section 111 or 112 of the Clean Air Act.

(23) Necessary preconstruction approvals or permits means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

~~(8)(A)~~(24)(a) **“Net emissions increase”** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraphs ~~(b)(A)(4)~~ through (A)(8); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph ~~(e)(8)(A)(ii)(B)(24)(a)(ii)~~ shall be determined as provided in paragraph ~~(e)(2)(B)(3)~~, except that paragraphs ~~(e)(2)(A)(iii)(B)(3)(a)(iii)~~ and ~~(e)(2)(B)(iv)(B)(3)(b)(iv)~~ shall not apply.

~~(B)(b)~~ An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs ~~before the date that the increase from the particular change occurs;~~ between:

(i) The date five (5) years before construction on the particular change commences; and

(ii) The date that the increase from the particular change occurs.

~~(C)(c)~~ An increase or decrease in actual emissions is creditable only if:

~~(i) It occurs within five years before construction on the particular change commences; and~~

~~(ii)(i)~~ (i) The Department has not relied on it in issuing a permit for the source, which permit is in effect when the increase in actual emissions from the particular change occurs;

(ii) [Reserved]

~~(D)(d)~~ An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

~~(E)(e)~~ A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions₁ or the old level of allowable emissions₂, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; ~~and~~

(iii) The Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

~~(F)(f)~~ An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;

~~(G)(g)~~ Paragraph ~~(e)(1)(B)(B)(1)(b)~~ shall not apply for determining creditable increases and decreases or after a change.

~~(9)(25)~~ **“Nonattainment major new source review (NSR) program”** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this regulation, or a program that implements 40 CFR Part 51, appendix Appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

~~(10)~~ **[Reserved]**

~~(26)~~ **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

~~(27)~~ **Potential to emit** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source 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 treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

~~(28)~~ **Predictive emissions monitoring system (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

~~(29)~~ **Prevention of Significant Deterioration (PSD) permit** means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

~~(30)~~ **Project** means a physical change in, or change in the method of operation of, an existing major stationary source.

~~(11)(A)(31)(a)~~ **“Projected actual emissions”** means, the maximum annual rate, in ~~tpy~~ tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (twelve (12)-month period) following the date the unit resumes regular operation after the project, or in any one of the ten (10) years following that date, if the project involves increasing the emissions unit's

design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

~~(B)(b)~~ In determining the projected actual emissions under paragraph ~~(e)(11)(A)(B)(31)(a)~~ before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24)-month period used to establish the baseline actual emissions under paragraph ~~(e)(2)(B)(3)~~ and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) In lieu of using the method set out in paragraphs ~~(e)(11)(B)(i)(B)(31)(b)(i)~~ through ~~(iii)(B)(31)(b)(iii)~~ may elect to use the emissions unit's potential to emit, in tpy tons per year, as defined under paragraph ~~(b)(37)~~ of Standard 7 in paragraph (B)(27) of this section.

~~(12) "Prevention of Significant Deterioration (PSD) permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.~~

~~(13)(32)~~ **"Regulated NSR pollutant,"** for purposes of this regulation, means the following:

~~(A)(a)~~ Oxides of nitrogen~~Nitrogen oxides~~ or any volatile organic compounds;

~~(B)(b)~~ Any pollutant for which a national ambient air quality standard has been promulgated; or

~~(C)(c)~~ Any pollutant that is identified under this paragraph as a constituent or precursor of a general pollutant listed under paragraphs ~~(e)(13)(A)(B)(32)(a)~~ or ~~(B)(B)(32)(b)~~, provided that a such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

~~(a)(i)~~ Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

~~(b)(ii)~~ Sulfur dioxide is a precursor, volatile organic compounds, nitrogen oxides, and ammonia are precursors to PM_{2.5} in all any PM_{2.5} nonattainment areas.

~~(c)~~ Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

~~(d) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations; or~~

(d) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in nonattainment major NSR permits issued under this ruling. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(33) **Replacement unit** means an emissions unit for which all the criteria listed in (B)(33)(a) through (B)(33)(d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit;

(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

(c) The replacement does not alter the basic design parameters of the process unit; and

(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(34) **Resource recovery facility** means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this Ruling.

(35) **Reviewing authority** means the state air pollution control agency, local agency, other state agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR 51.165 and 40 CFR 51.166, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

(36) **Secondary emissions** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(14)(37) “**Significant**” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, as a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

Carbon monoxide: 100 tpy

Nitrogen oxides: 40 tpy

Particulate matter:

15 tpy of PM₁₀ emissions

10 tpy of direct PM_{2.5};

40 tpy of sulfur dioxide emissions;

40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph 13 of this section

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

<u>Pollutant</u>		<u>Emissions Rate</u> (tons per year)
<u>Carbon monoxide</u>	<u>Marginal and Moderate Nonattainment Areas</u>	<u>100</u>
	<u>Serious Nonattainment Areas</u>	<u>50*</u>
<u>Nitrogen oxides</u>		<u>40</u>
<u>Sulfur dioxide</u>		<u>40</u>
<u>PM₁₀</u>		<u>15</u>
<u>PM_{2.5}</u>	<u>of direct PM_{2.5}</u>	<u>10</u>
	<u>of SO₂, NO_x, or VOC</u>	<u>40</u>
<u>Ozone</u>	<u>Marginal and Moderate Nonattainment Areas</u>	<u>40 (of VOC or NO_x)</u>
	<u>Serious and Severe Nonattainment Areas</u>	<u>25 (of VOC or NO_x)</u>
	<u>Extreme Nonattainment Areas</u>	<u>Any (of VOC or NO_x)</u>
<u>Lead</u>		<u>0.6</u>

* The significant emission rate of 50 tons for carbon monoxide in serious nonattainment areas shall only apply if the Administrator has made a determination that stationary sources significantly contribute to the carbon monoxide levels in the area.

(15)(38) “**Significant emissions increase**” means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (e)(14)(B)(37)) for that pollutant.

(39) Stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(40)(16) “Volatile organic compounds (VOC)” is as defined in Regulation 61-62.1, Section (I), Definitions.

~~(d) Permitting requirements~~

~~(C)(1) Conditions for approval. Permitting requirements.~~ If the Department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.341 as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

~~(A)(a)~~ The major stationary source or major modification is required to meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

~~(B)(b)~~ The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same state as the proposed source are in compliance with all applicable emission limitations and standards under the Clean Air Act (or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).

~~(C)(c)~~ The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources. Emission reductions shall be in effect and enforceable prior to the date the new source or modification commences operation. The emission reductions shall be obtained in accordance with the ~~following provisions:~~ requirements in Section (D), Offset standards.

(d) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR Part 51, Appendix S, Emission Offset Interpretative Ruling.

(e) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(2) Exemptions. Temporary emission sources, such as pilot plants and portable facilities which will be relocated outside of the nonattainment area after a short period of time, are exempt from the requirements of paragraphs (C)(1)(c) and (C)(1)(d) of this section.

(3) Secondary emissions. Secondary emissions need not be considered in determining whether the stationary source or modification is major. However, if a source is subject to this regulation on the basis of the direct emissions from the source, the applicable conditions in paragraph (C)(1) must also be met for secondary emissions. However, secondary emissions may be exempt from paragraphs (C)(1)(a) and (C)(1)(b) of this section.

(4) The requirements of this regulation applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

(D) Offset standards.

(1) All emission reductions claimed as offset credit shall be permanent, quantifiable, federally enforceable and surplus;

~~(i)(2)~~ Where the permitted emissions limit allows greater emissions than the potential to emit of the source (as when a state has a single particulate emission limit for all fuels), emissions offset credit will be allowed only for control below this potential;

~~(ii)(3)~~ For an existing fuel combustion source, credit shall be based on the allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

~~(iii)(a)(4)~~ Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA approved attainment plan, for offsets if the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. No credit may be given for shutdowns that occurred before August 7, 1977.

~~(b)(5) Such reductions may be credited if~~ Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (D)(4) may be generally credited only if:

~~(a) the~~ The shutdown or curtailment occurred on or after the date the new source permit application is filed; or,

~~(b) if the~~ The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provision of paragraph (d)(C)(iii)(a) are observed emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4).

~~(iv)(6)~~ No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

~~(v) All emission reductions claimed as offset credit shall be federally enforceable and surplus;~~

(7) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.

(8) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (B)(2)) and the actual emissions before the modification (as defined in paragraph (B)(1)) for each emissions unit.

(9) If a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

~~(a)(10) Eligibility as Emission Offsets.~~ Any facility that has the potential to emit any NAAQS pollutant in an amount greater than five (5) tpy tons per year and that is located in a federally-designated nonattainment area shall be eligible to create emission offsets.

~~(1) To be eligible to be an emission offset:~~

~~(A) A reduction in emissions shall be permanent, quantifiable, enforceable, and surplus and must have occurred after December 31 of the base year inventory for those pollutants that are designated nonattainment by the EPA. The base year inventory date is two years preceding the date of nonattainment designation. However, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.~~

~~(11) (B)~~ Emission reductions shall have been created by an existing facility that has obtained an enforceable air quality permit or letter of permit cancellation resulting from the surrender of the source's permit(s).

~~(2)(12)~~ Emission reductions may be created by any of, or a combination of, the following methods:

~~(A)(a)~~ Installation of control equipment beyond what is necessary to comply with existing requirements;

~~(B)(b)~~ A change in process inputs, formulations, products or product mix, fuels, or raw materials;

~~(C)(c)~~ A reduction in actual emission rates; or

~~(D)~~ A reduction in hours of operation;

~~(E)~~ Production curtailment or reduction in throughput;

~~(F)~~ Shutdown of emitting sources; or

~~(G)(d)~~ Any other enforceable method that the Department determines to result in real, permanent, quantifiable, federally enforceable, and surplus reduction of emissions.

~~(3)(13)~~ A completed emissions offset submittal must be received by the Department within one (1) year of the date of the creation of the reductions. Emission offsets not requested within one (1) year of the date of the creation of the reductions will be permanently retired. Prior to commencing operation of a permitted emissions unit, Department approval for the required emission offsets must be granted.

~~(4)(14)~~ The following emission reductions that are not considered surplus, are ineligible for emission offsets:

~~(A)~~ Emission reductions that are not considered surplus, such as:

~~(i)~~(a) Emission reductions that have previously been used to avoid Regulation 61-62.5 Standard No. 7, Prevention of Significant Deterioration, or Regulation 61-62.5 Standard No. 7.1, Nonattainment New Source Review (NSR), through a netting demonstration;

~~(ii)~~(b) Emission reductions of hazardous air pollutants, listed in Section 112(b) of the Clean Air Act, to the extent needed to comply with Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP), and Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, ~~(however, However,~~ emission reductions of hazardous volatile organic compound (VOC) and/or hazardous particulate matter (PM) air pollutants beyond the amount of reductions necessary to comply with Regulation 61-62.61, NESHAP, and Regulation 61-62.63, NESHAP for Source Categories, are considered surplus);

~~(iii)~~(c) Emission reductions of nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM) and VOCs to the extent needed to comply with Section 111 of the ~~CAA-Clean Air Act~~ and Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards (NSPS); ~~(however, However,~~ emission reductions of ~~VOCs, NO_x, SO₂, PM and VOCs~~ beyond the amount of reductions necessary to comply with Regulation 61-62.60, South Carolina Designated Facility Plan and NSPS, are considered surplus);

~~(iv)~~(d) Emission reductions from emission units covered under an agreement, order, or variance for exceeding an emission standard until compliance is demonstrated with the emission standard that is the subject of the agreement, order or variance;

~~(v)~~(e) ~~Sources-~~Emission reductions from sources that have operated less than twelve (12) months;

~~(vi)~~(f) Emission reductions required in order to comply with any state or federal regulation not listed above, unless these reductions are in excess of the amount required by the state or federal regulation; ~~or and~~

~~(vii)~~(g) ~~Facilities-~~Emission reductions from facilities that have received a Department transmittal letter ~~notifying with notification~~ of permit cancellation due to the facility's decision to close out its operating permit without a request to qualify facility emission reductions as offsets.

(E) (b) Calculation of Emission Offsets

(1) The following procedure shall be used to calculate emission offsets:

~~(A)~~(a) The source shall calculate average annual actual emissions, in ~~tpy-tons per year~~, before the emission reduction using data from the twenty-four (24)-month period immediately preceding the reduction in emissions. With the Department's approval, the use of a different time period, not to exceed ten (10) years immediately preceding the reduction in emissions, may be allowed if the owner or operator of the source documents that such period is more representative of normal source operation, but not prior to the base year inventory date, which is the last day of the two (2) years preceding the date of nonattainment designation; and

~~(B)~~(b) The emission offsets created shall be calculated by subtracting the allowable emissions following the reduction from the average annual actual emissions prior to the reduction.

(2) For any emissions unit that has been operating for a consecutive period of at least twelve (12) months but less than twenty-four (24) months on the base year inventory date, based on the unit's potential to emit, emissions shall be calculated equal to the amount needed to complete a twenty-four (24)-month period on the base year inventory date.

(F) ~~(vi)~~ Location of offsetting emissions. Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Department's approval only if: ~~(a) the other area has an equal or higher nonattainment classification than the area in which the proposed source is located and (b) emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.~~

(1) The other area has an equal or higher nonattainment classification than the area in which the proposed source is located, and

(2) Emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(G) ~~(vii)~~ Emission offsetting ratios. Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

~~(a)(1)~~ Emissions for carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), lead (Pb), and particulate matter (PM₁₀ and PM_{2.5}) nonattainment areas shall be offset at a ratio greater than one to one.

~~(b)(2)~~ Emissions increases for ozone nonattainment areas shall be offset for volatile organic compounds (VOCs) and NO_x in accordance with the following table:

Designation	Offset ratios
Subpart I	>1 to 1
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1
Extreme	1.5 to 1

~~(viii) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.~~

~~(ix) [Reserved]~~

~~(x) [Reserved]~~

~~(xi) The total tonnage of increased emissions, in tpy, resulting from a major modification that must be offset in accordance with section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (b)(3) of Standard 7) and the actual emissions before the modification (as defined in paragraph (c)(1)) for each emissions unit.~~

~~(D) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR 51, Appendix S, Emission Offset Interpretative Ruling.~~

~~(E) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed~~

~~source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.~~

(H) Interpollutant offsetting.

(1) In meeting the emissions offset requirements of Section (D) the emissions offsets obtained shall be for the same regulated NSR pollutant unless interpollutant offsetting is permitted for a particular pollutant as specified in this paragraph.

(a) The offset requirement(s) of Section (D) for emissions of the ozone precursors NO_x and VOC may be satisfied by offsetting reductions of emissions of either of those precursors, if all other requirements for such offsets are also satisfied.

(b) The offset requirements of Section (D) for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions of direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under paragraph (B)(32)(c) if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

(2) The control requirements applicable to major stationary sources and major modifications of PM_{2.5} shall also apply to major stationary sources and major modifications of PM_{2.5} precursors in a PM_{2.5} nonattainment area, except that the Department may exempt new major stationary sources and major modifications of a particular precursor from the requirements for PM_{2.5} if the nonattainment NSR precursor demonstration submitted to and approved by the Administrator shows that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area. Any demonstration submitted for the Administrator's review must meet the conditions for a nonattainment NSR precursor demonstration as set forth in 40 CFR 51.1006(a)(3).

(I) Banking of emission offsets. For new sources obtaining permits by applying offsets after January 16, 1979, the Department may allow offsets that exceed the requirement of reasonable progress toward attainment to be "banked" (i.e., saved to provide offsets for a source seeking a permit in the future) for future use. Likewise, the Department may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the State Implementation Plan for future use.

(J) [Reserved]

(K) [Reserved]

(L) Source obligation.

~~(2)(A)~~(1) Any owner or operator who constructs (1) operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

~~(B)~~(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project;

each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

~~(C)~~(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the ~~plan~~ State Implementation Plan and any other requirements under local, state, or federal law.

~~(D)~~(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

~~(3)~~(5) Monitoring, Recordkeeping, and Reporting. The following provisions apply ~~to~~ with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs ~~(e)(11)(B)(i)(B)(31)(b)(i)~~ through ~~(iii)(B)(31)(b)(iii)~~ for calculating projected actual emissions.

~~(A)~~(a) If the project requires construction permitting under Regulation 61-62.1, Section II “Permit Requirements,” the owner or operator shall provide a copy of the information set out in paragraph ~~(d)(3)(B)(L)(5)(b)~~ as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II “Permit Requirements,” is not required, the owner or operator shall maintain the information set out in paragraph ~~(d)(3)(L)(5)~~.

~~(B)~~(b) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph ~~(e)(11)(B)(iii)(B)(31)(b)(iii)~~ and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(c) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (L)(5)(b) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

~~(C)~~(d) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph ~~(d)(3)(B)(ii)(L)(5)(b)(ii)~~; and calculate and maintain a record of the annual emissions, in ~~tpy~~ tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the

project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

~~(D)~~(e) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within sixty (60) days after the end of each year during which records must be generated under paragraph ~~(d)(3)(B)~~(L)(5)(b) setting out the unit's annual emissions during the year that preceded submission of the report.

~~(E)~~(f) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in ~~tpy tons per year~~, from the project identified in paragraph ~~(d)(3)(B)~~(L)(5)(b), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph ~~(d)(3)(B)(iii)~~(L)(5)(b)(iii), by a significant amount (as defined in paragraph ~~(e)(14)(B)~~(37)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph ~~(d)(3)(B)(iii)~~(L)(5)(b)(iii). Such report shall be submitted to the Department within sixty (60) days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph ~~(d)(3)(C)~~(L)(5)(d); and

(iii) Any other information needed ~~for~~ to make a compliance determination (for example, an explanation as to why the emissions differ from the preconstruction projection).

(6) A "reasonable possibility" under paragraph (L)(5) occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(38) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(31)(b)(iii), sums to at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(38) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph (L)(6)(a), then provisions (L)(5)(c) through (L)(5)(f) do not apply to the project.

~~(4) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements," the owner or operator shall provide notification of source status as part of the permit application to the Department.~~

~~(5)~~(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph ~~(d)(3)~~(L)(5) for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(M) Public participation.

~~(6) Public Participation~~(1) Within thirty (30) days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a

deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

~~(7)(2)~~ In accordance with Regulation 61-30, Environmental Protection Fees, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

~~(i)(a)~~ For the purposes of this ~~paragraph (d)(7) section~~, the time frame for making a final determination shall be consistent with ~~R-Regulation~~ 61-30, Environmental Protection Fees, paragraph (H)(2)(c)(iii).

~~(ii)(b)~~ Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

~~(iii)(c)~~ Make available in at least one location in each region in which the proposed ~~plant facility~~ or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on a public website identified by the Department.

~~(iv)(d)~~ Notify the public, by ~~advertisement in a newspaper of general circulation in each region in which the proposed plant or modification would be constructed~~, of the application, the preliminary determination, the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as written public comment. posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).

~~(v)(e)~~ Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the ~~plant facility~~ or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the ~~plant facility~~ or modification.

~~(vi)(f)~~ Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the facility or modification, alternatives to the ~~plant facility~~ or modification, the control technology required, and other appropriate considerations.

~~(vii)(g)~~ Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same ~~locations~~ location or on the same website where the Department made available preconstruction information relating to the proposed ~~plant facility~~ or modification.

~~(viii)~~(h) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

~~(ix)~~(i) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same website where the Department made available preconstruction information and public comments relating to the ~~plant~~ facility or modification.

~~(x)~~(j) Notify EPA of every action related to the consideration of the permit.

(e) Exemptions. ~~The provisions of paragraph (d) shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:~~

~~(i) Coal cleaning plants (with thermal dryers);~~

~~(B) Kraft pulp mills;~~

~~(C) Portland cement plants;~~

~~(D) Primary zinc smelters;~~

~~(E) Iron and steel mills;~~

~~(F) Primary aluminum ore reduction plants;~~

~~(G) Primary copper smelters;~~

~~(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~(I) Hydrofluoric, sulfuric, or nitric acid plants;~~

~~(J) Petroleum refineries;~~

~~(K) Lime plants;~~

~~(L) Phosphate rock processing plants;~~

~~(M) Coke oven batteries;~~

~~(N) Sulfur recovery plants;~~

~~(O) Carbon black plants (furnace process);~~

~~(P) Primary lead smelters;~~

~~(Q) Fuel conversion plants;~~

~~(R) Sintering plants;~~

~~(S) Secondary metal production plants;~~

~~(T) Chemical process plants—The term chemical process plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;~~

~~(U) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;~~

~~(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;~~

~~(W) Taconite ore processing plants;~~

~~(X) Glass fiber processing plants;~~

~~(Y) Charcoal production plants;~~

~~(Z) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and~~

~~(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.~~

~~(f) [Reserved]~~

~~(g) [Reserved]~~

~~(h) [Reserved]~~

~~(i)(N) Actuals PALs.~~ The provisions in paragraphs ~~(i)(1)(N)(1)~~ through ~~(15)(N)(15)~~ govern actuals PALs.

(1) Applicability.

~~(i)(a)~~ The Department may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph ~~(i)(1)(ii) (N)(1)(b)~~) if the PAL meets the requirements in paragraphs ~~(i)(1)(N)(1)~~ through ~~(15)(N)(15)~~. The term "PAL" shall mean "actuals PAL" throughout ~~paragraph~~Section ~~(i)(N)~~.

~~(ii)(b)~~ The Department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

~~(iii)(c)~~ Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs ~~(i)(1)(N)(1)~~ through ~~(15)(N)(15)~~, and complies with the PAL permit:

~~(A)(i)~~ Is not a major modification for the PAL pollutant;

~~(B)(ii)~~ Does not have to be approved through Regulation 61-62.5, Standard 7.1, "Nonattainment New Source Review"; however, will be reviewed through Regulation 61-62.1, Section II, ~~A~~, "Permit Requirements," and

~~(C)(iii)~~ Is not subject to the provisions in paragraph ~~(1)(2)(D)(L)(4)~~ (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

~~(iv)~~(d) Except as provided under paragraph ~~(i)(1)(iii)(C)(N)(1)(c)(iii)~~, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs ~~(i)(2)(i)(N)(2)(a)~~ through ~~(xi)(N)(2)(k)~~ shall apply to actuals PALs consistent with paragraphs ~~(i)(1)(N)(1)~~ through ~~(15)(N)(15)~~. When a term is not defined in these paragraphs, it shall have the meaning given in ~~paragraph~~Section (e)(B) of this regulation; ~~paragraph (b) of Regulation 61-62.5, Standard 7, "Prevention of Significant Deterioration" ("Standard 7");~~ or in the Clean Air Act.

~~(i)(a)~~ **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph ~~(e)(1)(B)(3)~~) of all emissions units (as defined in paragraph ~~(b)(20)~~ of ~~Standard 7 (B)(16)~~ of this regulation) at the source, that emit or have the potential to emit the PAL pollutant.

~~(ii)(b)~~ **Allowable emissions** means "allowable emissions" as defined in paragraph ~~(b)(3)~~ of ~~Standard 7 (B)(2)~~ of this regulation, except as this definition is modified according to paragraphs: ~~(i)(2)(i)(A)(N)(2)(b)(i)~~ through ~~(B)(N)(2)(b)(ii)~~.

~~(A)(i)~~ The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

~~(B)(ii)~~ An emissions unit's potential to emit shall be determined using the definition in paragraph ~~(b)(37)~~ of ~~Standard 7 (B)(27)~~, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

~~(iii)(c)~~ **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph ~~(e)(14)(B)(37)~~ or in the Clean Air Act, whichever is lower.

~~(iv)~~(d) **Major emissions unit** means:

~~(A)(i)~~ Any emissions unit that emits or has the potential to emit one-hundred (100) tpy tons per year or more of the PAL pollutant in an attainment area; or

~~(B)(ii)~~ Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in ~~section~~ Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit fifty (50) or more tons of VOC per year.

~~(v)~~(e) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tpy tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs ~~(i)(1)(N)(1)~~ through ~~(15)(N)(15)~~.

~~(vi)~~(f) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

~~(vii)(g)~~ **PAL effective period** means the period beginning with the PAL effective date and ending ten (10) years later.

~~(viii)(h)~~ **PAL major modification** means, notwithstanding paragraphs ~~(e)(6)~~ and ~~(8)(B)(21)~~ and ~~(B)(24)~~ (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

~~(ix)(i)~~ **PAL permit** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1 Section II-~~G(G)~~, or the Title V permit issued by the Department that establishes a PAL for a major stationary source.

~~(x)(j)~~ **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

~~(xi)(k)~~ **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph ~~(e)(13)(B)(37)~~ or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph ~~(i)(2)(iv)~~ (N)(2)(d).

(3) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

~~(i)(a)~~ A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

~~(ii)(b)~~ Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

~~(iii)(c)~~ The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by paragraph ~~(i)(13)(i)~~ (N)(13)(a).

(4) General requirements for establishing PALs.

~~(i)(a)~~ The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs ~~(i)(4)(i)(A)~~ (N)(4)(a)(i) through ~~(G)~~ (N)(4)(a)(vii) are met.

~~(A)(i)~~ The PAL shall impose an annual emission limitation in ~~tpy~~ tons per year that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve (12) month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

~~(B)(ii)~~ The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph ~~(i)(5)~~ (N)(5)

~~(C)~~(iii) The PAL permit shall contain all the requirements of paragraph ~~(i)(7)(N)(7)~~

~~(D)~~(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

~~(E)~~(v) Each PAL shall regulate emissions of only one pollutant.

~~(F)~~(vi) Each PAL shall have a PAL effective period of ten (10) years.

~~(G)~~(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs ~~(i)(12)(N)(12)~~ through ~~(14)(N)(14)~~ for each emissions unit under the PAL through the PAL effective period.

~~(ii)(b)~~ At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under ~~paragraph (d)(1)(e) Section (D) Offset standards~~ unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent ~~paragraph (d)(6) and (d)(7) with~~ Section M. This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment. The Department must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

~~(i)(a)~~ Except as provided in paragraph ~~(i)(6)(ii)(N)(6)(b)~~, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph ~~(e)(2)(B)(3))~~ of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph ~~(e)(14)(B)(37)~~ or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four (24)-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this twenty-four (24)-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) ~~(in tons/yr)~~ in tons per year in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) ppm NO_x to a new rule limit of thirty (30) ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

~~(ii)(b)~~ For newly constructed units (which do not include modifications to existing units) on which actual construction began after the twenty-four (24)-month period the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in paragraphs ~~(i)(7)(i)(N)(7)(a)~~ through ~~(x)(N)(7)(j)~~.

~~(i)(a)~~ The PAL pollutant and the applicable source-wide emission limitation in ~~tpy~~ tons per year.

~~(ii)~~(b) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

~~(iii)~~(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph ~~(i)(10)~~(N)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

~~(iv)~~(d) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

~~(v)~~(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph ~~(i)(9)~~(N)(9).

~~(vi)~~(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by paragraph ~~(i)(13)~~(i)(N)(13)(a).

~~(vii)~~(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph ~~(i)(12)~~(N)(12).

~~(viii)~~(h) A requirement to retain the records required under paragraph ~~(i)(13)~~(N)(13) on site. Such records may be retained in an electronic format.

~~(ix)~~(i) A requirement to submit the reports required under paragraph ~~(i)(14)~~(N)(14) by the required deadlines.

~~(x)~~(j) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs ~~(i)(8)~~(i)(N)(8)(a) and ~~(ii)~~(N)(8)(b) apply to actuals PALs.

~~(i)~~(a) **PAL effective period.** The Department shall specify a PAL effective period of ten (10) years.

~~(ii)~~(b) **Reopening of the PAL permit.**

~~(A)~~(i) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under ~~paragraph (d)(2)~~Section (D).

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph ~~(i)(11)~~(N)(11).

~~(B)~~(ii) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Department may impose on the major stationary source under the State Implementation Plan.

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

~~(C)(iii)~~ Except for the permit reopening in paragraph ~~(i)(8)(ii)(A)(1)(N)(8)(b)(i)(1)~~ for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph ~~(i)(5)(N)(5)~~

(9) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in paragraph ~~(i)(10)(N)(10)~~ shall expire at the end of the PAL effective period, and the requirements in paragraphs ~~(i)(9)(i)(N)(9)(a)~~ through ~~(i)(N)(9)(e)~~ shall apply.

~~(i)(a)~~ Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs ~~(i)(9)(i)(A)(N)(9)(a)(i)~~ through ~~(B)(N)(9)(a)(ii)~~.

~~(A)(i)~~ Within the time frame specified for PAL renewals in paragraph ~~(i)(10)(ii)(N)(10)(b)~~, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph ~~(i)(10)(v)(N)(10)(e)~~, such distribution shall be made as if the PAL had been adjusted.

~~(B)(ii)~~ The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

~~(ii)(b)~~ Each emissions unit(s) shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Predictive Emissions Monitoring System (PEMS), or Continuous Parameter Monitoring System (CPMS) to demonstrate compliance with the allowable emission limitation.

~~(iii)(c)~~ Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph ~~(i)(9)(i)(A)(N)(9)(a)(i)~~, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

~~(iv)(d)~~ Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph ~~(e)(6)(B)(21)~~.

~~(v)(e)~~ The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established

pursuant to paragraph ~~(d)(2)(D)(L)(4)~~, but were eliminated by the PAL in accordance with the provisions in paragraph ~~(i)(1)(iii)(C)(N)(1)(c)(iii)~~.

(10) Renewal of a PAL.

~~(i)(a)~~ The Department shall follow the procedures specified in paragraph ~~(i)(5)(N)(5)~~ in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

~~(ii)(b)~~ **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

~~(iii)(c)~~ **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs ~~(i)(10)(iii)(A)(N)(10)(c)(i)~~ through ~~(D)(N)(10)(c)(iv)~~.

~~(A)(i)~~ The information required in paragraphs ~~(i)(3)(i)(N)(3)(a)~~ through ~~(iii)(N)(3)(c)~~.

~~(B)(ii)~~ A proposed PAL level.

~~(C)(iii)~~ The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

~~(D)(iv)~~ Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

~~(iv)(d)~~ **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs ~~(i)(10)(iv)(A)(N)(10)(d)(i)~~ and ~~(B)(N)(10)(d)(ii)~~. However, in no case may any such adjustment fail to comply with paragraph ~~(i)(10)(iv)(C)(N)(10)(d)(iii)~~.

~~(A)(i)~~ If the emissions level calculated in accordance with paragraph ~~(i)(6)(N)(6)~~ is equal to or greater than eighty (80) percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph ~~(i)(10)(iv)(B)(N)(10)(d)(ii)~~; or

~~(B)(ii)~~ The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

~~(C)(iii)~~ Notwithstanding paragraphs ~~(i)(10)(iv)(A)(N)(10)(d)(i)~~ and ~~(B)(N)(10)(d)(ii)~~,

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph ~~(i)(11)(N)(11)~~ (increasing a PAL).

~~(v)(e)~~ If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

~~(i)(a)~~ The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs ~~(i)(11)(i)(A)(N)(11)(a)(i)~~ through ~~(D)(N)(11)(a)(iv)~~.

~~(A)(i)~~ The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

~~(B)(ii)~~ As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

~~(C)(iii)~~ The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph ~~(i)(11)(i)(A)(N)(11)(a)(i)~~, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

~~(D)(iv)~~ The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

~~(i)(b)~~ The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph ~~(i)(11)(i)(B)(N)(11)(a)(ii)~~), plus the sum of the baseline actual emissions of the small emissions units.

~~(ii)(c)~~ The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph ~~(i)(5)(N)(5)~~.

(12) Monitoring requirements for PALs.

~~(i)(a)~~ General Requirements.

~~(A)(i)~~ Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

~~(B)(ii)~~ The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs ~~(i)(12)(ii)(A)(N)(12)(b)(i)~~ through ~~(D)(N)(12)(b)(iv)~~ and must be approved by the Department.

~~(C)(iii)~~ Notwithstanding paragraph ~~(i)(12)(i)(B)(N)(12)(a)(ii)~~, you may also employ an alternative monitoring approach that meets paragraph ~~(i)(12)(i)(A)(N)(12)(a)(i)~~ if approved by the Department.

~~(D)(iv)~~ Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

~~(ii)(b)~~ Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs ~~(i)(12)(iii)(N)(12)(c)~~ through ~~(ix)(N)(12)(i)~~:

~~(A)(i)~~ Mass balance calculations for activities using coatings or solvents;

~~(B)(ii)~~ Continuous emissions monitoring system (CEMS);

~~(C)(iii)~~ Continuous parameter monitoring system (CPMS) or Predictive emissions monitoring system (PEMS); and

~~(D)(iv)~~ Emission Factors.

~~(iii)(c)~~ Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

~~(A)(i)~~ Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

~~(B)(ii)~~ Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

~~(C)(iii)~~ Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

~~(iv)(d)~~ CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

~~(A)(i)~~ CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

~~(B)~~(ii) CEMS must sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.

~~(v)~~(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

~~(A)~~(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

~~(B)~~(ii) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

~~(vi)~~(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

~~(A)~~(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

~~(B)~~(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

~~(C)~~(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the Department determines that testing is not required.

~~(vii)~~(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

~~(viii)~~(h) Notwithstanding the requirements in paragraphs ~~(i)~~(12)(iii)(N)(12)(c) through ~~(vii)~~(N)(12)(g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

~~(A)~~(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

~~(B)~~(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

~~(ix)~~(i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every five (5) years after issuance of the PAL.

(13) Recordkeeping requirements.

~~(i)(a)~~ The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of ~~paragraph~~Section ~~(i)(N)~~ and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of such record.

~~(ii)(b)~~ The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

~~(A)(i)~~ A copy of the PAL permit application and any applications for revisions to the PAL; and

~~(B)(ii)~~ Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable Title V operating permit program. The reports shall meet the requirements in paragraphs ~~(i)(14)(i)(N)(14)(a)~~ through ~~(iii)(N)(14)(c)~~.

~~(i)(a)~~ Semi-Annual Report. The semi-annual report shall be submitted to the Department within thirty (30) days of the end of each reporting period. This report shall contain the information required in paragraphs ~~(i)(14)(i)(A)(N)(14)(a)(i)~~ through ~~(G)(N)(14)(a)(vii)~~.

~~(A)(i)~~ The identification of owner and operator and the permit number.

~~(B)(ii)~~ Total annual emissions tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to paragraph ~~(i)(13)(i)(N)(13)(a)~~.

~~(C)(iii)~~ All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

~~(D)(iv)~~ A list of any emissions units modified or added to the major stationary source during the preceding six (6)-month period.

~~(E)(v)~~ The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

~~(F)(vi)~~ A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph ~~(i)(12)(vii)(N)(12)(g)~~.

~~(G)(vii)~~ A signed statement by the responsible official (as defined by Regulation 61-62.70, ~~Title V Operating Permit Program~~) certifying the truth, accuracy, and completeness of the information provided in the report.

~~(ii)(b)~~ Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

~~(A)~~(i) The identification of owner and operator and the permit number;

~~(B)~~(ii) The PAL requirement that experienced the deviation or that was exceeded;

~~(C)~~(iii) Emissions resulting from the deviation or the exceedance; and

~~(D)~~(iv) A signed statement by the responsible official (as defined by ~~the applicable Title V operating permit program Regulation 61-62.70~~) certifying the truth, accuracy, and completeness of the information provided in the report.

~~(ii)~~(c) Re-validation results. The owner or operator shall submit to the Department the results of any re-validation test or method within three (3) months after completion of such test or method.

(15) Transition requirements.

~~(i)~~(a) The Department may not issue a PAL that does not comply with the requirements in paragraphs ~~(aa)(1)(N)(1)~~ through ~~(45)(N)(15)~~ after the date these provisions become effective.

~~(ii)~~(b) The Department may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs ~~(i)(4)(N)(1)~~ through ~~(45)(N)(15)~~.

~~(j)~~(O) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

61-62.70. Title V Operating Permit Program.

Regulation 61-62.70.7 (h)(1), shall be revised as follows:

(1) Notice shall be given by ~~one of the following methods: By publishing the notice in a newspaper of general circulation in the area where the source is located (or in a State publication designed to give general public notice) or by posting the notice and the draft permit, for the duration of the public comment period, on a public website identified by the Department, if the Department has selected website noticing as its as the "consistent noticing method." The This~~ consistent noticing method shall be used for all draft permits subject to notice under this paragraph. ~~If website noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public comment period, on a public website identified by the Department.~~ In addition, notice shall be given to persons on a mailing list developed by the Department using generally accepted methods (e.g., hyperlink sign-up function or radio button on an agency website, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe. The Department may use ~~other~~ additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in the area where the source is located (or in a State publication designed to give general public notice);

Fiscal Impact Statement:

There is no anticipated increased cost to the state or its political subdivisions resulting from this revision. Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the SIP include revisions that will help streamline state requirements and therefore reduce economic burden.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan (“SIP”).

Purpose: The amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, support the Department’s goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments expand and clarify definitions applicable to air pollution control regulations and standards; streamline permitting options; clarify reporting requirements; identify the Department’s consistent noticing method; improve the regulations’ organizational structure; and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62.

Legal Authority: 1976 Code Sections 48-1-10 *et seq.*

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Pursuant to the federal CAA and the South Carolina Pollution Control Act the Department is amending South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, and SIP as follows:

1. R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits,
2. The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation’s text,
3. R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling,
4. R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,

5. R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,

6. R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70, Title V Operating Permit Program, to update public participation procedures, and

7. Definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

These amendments are needed, reasonable, and beneficial in that they simplify, clarify, and correct elements of the Department's air quality regulations to support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner.

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate an increase in costs to the state, its political subdivisions, or the regulated community resulting from these revisions. The amendments ensure consistency with Environmental Protection Agency ("EPA") regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The amendments will benefit the regulated community by maintaining state implementation of the federal requirements, as opposed to federal implementation.

Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the SIP, will help streamline state requirements related to permitting and other matters to conform to current Prevention of Significant Deterioration, New Source Review, and the Title V Permit Program standards. These revisions may potentially save money for the regulated community by providing clarification on exemptions, permitting, and other requirements, while continuing to ensure environmental protection.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions. These revisions seek to provide clarity to the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, seek to provide continued state-focused protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The Department does not anticipate detrimental effect on the environment and/or public health associated with these revisions. To the contrary, the state's delegated authority to implement programs beneficial to public health and the environment may be compromised if these amendments are not adopted. Permit streamlining and regulatory text clarification seek to have a positive effect on both the environment and public health.

Statement of Rationale:

The Department is amending Regulation 61-62, Air Pollution Control Regulations and Standards, to support the goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments expand and clarify definitions applicable to air pollution control regulations and standards, streamline permitting options, clarify reporting requirements, identify the Department's consistent noticing method, improve the regulation's organizational structure, and improve the overall text of Regulation 61-62 by including corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling.

ATTACHMENT B

SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT RESPONSES

Document No. 4815

R.61-62, Air Pollution Control Regulations and Standards

As of the July 23, 2018, close of the Notice of Proposed Regulation comment period:

NAME	SECTION CITATION	PUBLIC COMMENT	DEPARTMENT RESPONSE
EPA Region 4	R.61-62.5, Standard No. 7.1	<p>The EPA includes in its definition for “Major stationary source” any stationary source of air pollutants that emits, or has the potential to emit, 70 tons per year (tpy) of any individual precursor for fine particulate matter (PM_{2.5}) in any serious nonattainment area for PM_{2.5}. Sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia are recognized precursors to PM_{2.5} in any PM_{2.5} nonattainment area. <i>See</i> 40 CFR 51.165(a)(1)(iv)(A)(i)(viii) and (a)(1)(xxxvii)(C)(2). In Regulation 61-62.5, Standard No. 7.1, “Nonattainment New Source Review (NNSR),” at subparagraph (B)(22)(a), the table for major stationary source thresholds does not include applicable thresholds of 70 tpy for the precursors VOC and ammonia. It is recommended that the table be modified under the row for “PM_{2.5} in any serious nonattainment area for PM_{2.5}” to include the threshold of 70 tpy in the column for VOC and an additional column be added for ammonia to include the 70 tpy ammonia threshold.</p>	<p>The Department does not agree that ammonia must be included in the table for major stationary source thresholds as a precursor to PM_{2.5} in the definition of “Major stationary source” in SC Regulation 61-62.5, Standard No. 7.1. In accordance with 40 CFR 51.165 (a)(1)(iv)(A)(1)(viii) and (a)(1)(xxxvii)(C)(2), the definition of “Regulated NSR Pollutant” does include ammonia as a precursor to PM_{2.5}. However, under the definition of “Regulated NSR Pollutant” in Appendix S, (A)(31)(ii)(b)(4), the state has 24 months after the date of nonattainment designation for PM_{2.5} to submit a SIP for the Administrator’s review which contains the state’s preconstruction review provisions for PM_{2.5}.</p> <p>Therefore, the threshold of 70 tpy for ammonia will not be included in the table for major stationary source thresholds in the definition of “Major stationary source” at subparagraph (B)(22)(a) in S.C. Regulation 61-62.5, Standard No. 7.1.</p> <p>The Department made corrections to the table to include values for regulated pollutants: NO_x, VOC and SO₂ in PM_{2.5} nonattainment area, and the value for SO₂ in any serious nonattainment area for PM_{2.5}.</p>

<p>EPA Region 4</p>	<p>R.61-62.1, Section I R.61-62.1, Section II R.61-62.5, Standard No. 7, and R.61-62.5, Standard No. 7.1</p>	<p>South Carolina is revising its definition of “potential to emit” at Regulation 61-62.1, Section I(71) and in the prevention of significant deterioration regulation at 61-62.5, Standard No. 7(B)(37) to reflect that limits on potential to emit (PTE) can be either federally-enforceable or “legally and practicably” enforceable. South Carolina also adds this updated definition to the NNSR regulation at 61-62.5, Standard No. 7.1(B)(27). However, the State is not revising its definition of “synthetic minor source” at 62.1, Section I(92) to reflect similar language. Additionally, the State is not revising its requirements in the minor new source review regulation at 61-62.1, Section II(E) for synthetic minor construction permits, nor Section II(G) for conditional major operating permits. The regulations appear to still require federally enforceable permit limitations for these categories of sources. Please clarify whether the State intends to issue permits restricting PTE that are not federally enforceable for the purposes of avoiding major new source review construction and title V operating permitting requirements.</p>	<p>To address the inconsistency described by the commenter, the Department has removed these proposed wording changes that appeared in the Notice of Proposed Regulation.</p>
<p>EPA Region 4</p>	<p>R.61-62.1, Section II</p>	<p>South Carolina is revising the minor new source review regulation at R.61-62.1, Section II(D) for general construction permits, paragraph II(E)(5) [sic] for synthetic minor construction permits, and paragraph II(G)(7) for general conditional major operating permits to add a provision that allows the State to issue general permits in lieu of individual permits. Please clarify the State’s intent with this revised language.</p>	<p>To clarify that the Department can grant general permit coverage if a permit applicant meets the criteria of a general permit, the Department has amended the regulatory language in the proposed revisions at R.61-62.1, Section II(D) for general construction permits, paragraph II(E)(4) for synthetic minor construction permits (the EPA incorrectly identified at paragraph II(E)(5)), and paragraph II(G)(7) for general conditional major operating permits.</p> <p>For consistency, the Department has similarly amended the regulatory language in the proposed revisions at paragraph II(F)(5) for general operating permits, and paragraph II(I)(2) for registration permits.</p>

EPA Region 4	R.61-62.1, Section II	South Carolina is adding provisions to Regulation R.61-62.1 Section II at paragraph (G)(5) [sic], "General Operating Permits." Please clarify whether this paragraph intended to apply to any major sources. If this is not the case, consider adding clarifying applicability language to reflect this in the regulation.	The paragraph for General Operating Permits, at R.61-62.1, Section II at paragraph (F)(5) (the EPA incorrectly identified at paragraph II(G)(5)), applies only to minor sources, and does not apply to major sources. General permitting provisions for permitting of major sources are covered under Regulation R.61-62.70.6(d). Additional regulatory language is not necessary.
EPA Region 4	R.61-62.5, Standard No. 5.2	In Regulation R.61-62.5 Standard No. 5.2, "Control of Oxides of Nitrogen (NO _x)," South Carolina is eliminating the requirement to maintain records of startups and shutdowns in Section IV at subparagraph (C)(6). However, the corresponding requirement to specifically report which periods of excess emissions occur during startups and shutdowns remains in place at Section IV(C)(1)(d)(i)(B). This appears to be a potential mismatch in requirements. Please clarify the State's intent with the language revisions.	The reporting requirements for startups and shutdowns in Section IV at subparagraph (C)(1)(d)(i)(B) for turbines will not be removed from Regulation 61-62.5, Standard No. 5.2. These requirements are specific to periods of excess emissions and remain in effect for turbines in 40 CFR Part 60, Subparts GG and KKKK. The reporting requirements being removed at Section IV(C)(6) addressed the occurrence and duration of startups and shutdowns in the operation of affected sources.

(x) ACTION/DECISION
() INFORMATION

Date: June 7, 2018

To: S.C. Board of Health and Environmental Control

From: Bureau of Air Quality

Re: **Notice of Proposed Regulation Amending Regulation 61-62, *Air Pollution Control Regulations and Standards*.**

I. Introduction

The Bureau of Air Quality (“Bureau”) proposes the attached Notice of Proposed Regulation amending Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina Air Quality Implementation Plan (“SIP”) for publication in the June 22, 2018, *South Carolina State Register* (“*State Register*”). Legal authority for this amendment resides in the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 et seq. (“Pollution Control Act”), which authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts this amendment from General Assembly review, as the Department promulgates this amendment for compliance with federal air pollution control laws.

II. Facts

1. Pursuant to the Pollution Control Act, and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

2. The United States Environmental Protection Agency promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include revisions to New Source Performance Standards (NSPS) mandated by 42 U.S.C. Section 7411; federal National Emission Standards for Hazardous Air Pollutants (NESHAP) mandated by 42 U.S.C. Section 7412; and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories mandated by 42 U.S.C. Section 7412.

3. The Department proposes to amend Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; Regulation 61-62.61, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*; and Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, to adopt the federal amendments to these standards promulgated from January 1, 2017, through December 31, 2017.

4. The Department proposes changes to Regulation 61-62.68, *Chemical Accident Prevention Provisions*, which include corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary.

5. The Department proposes to amend Regulation 61-62.70, *Title V Operating Permit Program*, by striking paragraph (a)(6) of Section 70.3, *Applicability*, to maintain state compliance with federal regulations.

6. Regulation 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program*, is based on the federal Clean Air Interstate Rule (CAIR). CAIR has been replaced by the federal Cross-State Air Pollution Rule (CSAPR) Trading Program, adopted by the Department as Regulation 61-62.97 on August 25, 2017. As a result, federal CAIR requirements implemented by Regulation 61-62.96 have sunsetted and are no longer in effect. The Department, therefore, proposes repealing Regulation 61-62.96 in its entirety.

7. 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.

8. Stakeholder meetings were held on February 6, 2018 (South Carolina Manufacturers Alliance annual meeting), February 15, 2018 (South Carolina Pulp and Paper Association meeting), and March 2, 2018 (SC Chamber of Commerce Environmental/Technical Committee meeting).

9. The Department had a Notice of Drafting published in the March 23, 2018, *State Register*. Notice was also published on the Department's Regulatory Information website in the *DHEC Monthly Regulation Development Update*. The Notice of Drafting was also sent via Department email list to interested stakeholders on March 23, 2018. The Department received no public comments by the April 23, 2018, close of the public comment period.

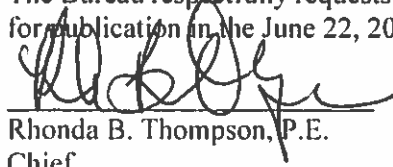
10. Department staff conducted an internal review of the proposed amendments on May 8, 2018.

11. South Carolina industries are already subject to these national air quality standards as a matter of federal law. Thus, there will be no increased cost to the state or its political subdivisions resulting from codification of these amendments to federal law. South Carolina is already reaping the environmental benefits of these amendments. There also will be no increased cost to the state or its political subdivisions as a result of the repeal of Regulation 61-62.97, which reflects the sunseting of federal CAIR regulations.

12. In accordance with S.C. Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement is required.

III. Request for Approval

The Bureau respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the June 22, 2018, *State Register*.


Rhonda B. Thompson, P.E.
Chief
Bureau Chief


Myra C. Reece
Director
Environmental Affairs

Attachments:

- A. Notice of Proposed Regulation
- B. Notice of Drafting published in the March 23, 2018, *State Register*

ATTACHMENT A

**STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR REGULATION 61-62, Air Pollution Control Regulations and Standards**

November 8, 2018

Document No. _____

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards.

Preamble:

1. Pursuant to the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 et seq., and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

2. The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include revisions to New Source Performance Standards (NSPS) mandated by 42 U.S.C. Section 7411; federal National Emission Standards for Hazardous Air Pollutants (NESHAP) mandated by 42 U.S.C. Section 7412; and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories mandated by 42 U.S.C. Section 7412.

3. The Department proposes to amend R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; R.61-62.61, National Emission Standards for Hazardous Air Pollutants; R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories; and the South Carolina State Implementation Plan (SIP), to adopt the federal amendments to these standards promulgated from January 1, 2017, through December 31, 2017.

4. The Department proposes changes to R.61-62.68, Chemical Accident Prevention Provisions, which include corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary and to maintain compliance with federal law.

5. The Department proposes to amend R.61-62.70, Title V Operating Permit Program, by striking paragraph (a)(6) of Section 70.3, Applicability, to maintain state compliance with federal regulations.

6. The Department proposes to amend R.61-62.96 to repeal the Clean Air Interstate Rule (CAIR) trading program regulations (Subparts AA through II, AAA through III, and AAAA through IIII) and reinstate applicable portions of the EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NO_x SIP Call), with amendments as necessary, to maintain state compliance with federal regulations. The Department adopted R.61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, on August 25, 2017. Subparts AA through II, AAA through III, and AAAA through IIII of R.61-62.96 are based on the federal CAIR regulation, which EPA has since replaced with federal CSAPR requirements implemented by R.61-62.97. As a result, federal CAIR requirements implemented by R.61-62.96 are no longer in effect.

The proposed NO_x SIP Call regulations will maintain state compliance with federal NO_x SIP Call requirements that remain applicable following the sunseting and repeal of CAIR.

7. The Department proposes further changes to R.61-62 deemed necessary, including, but not limited to, corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement of the text of R.61-62.

8. South Carolina industries are already subject to these national air quality standards as a matter of federal law. Thus, there will be no increased cost to the state or its political subdivisions resulting from codification of these amendments to federal law. South Carolina is already reaping the environmental benefits of these amendments. There also will be no increased cost to the state or its political subdivisions as a result of the repeal of R.61-62.96, which reflects the sunseting of federal CAIR regulations.

9. In accordance with S.C. Code Section 1-23-120(H) (Supp. 2017), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement is required.

10. The Department had a Notice of Drafting published in the September 28, 2018, State Register.

Section-by-Section Discussion of Proposed Amendments:

Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards

Regulation 61-62.60, Subpart A, “General Provisions”:

Subpart A, Table, is amended to incorporate federal revisions at 82 FR 28561, June 23, 2017; and 82 FR 32644, July 17, 2017, by reference.

Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)

Regulation 61-62.61, Subpart A, “General Provisions”:

Subpart A, Table, is amended to incorporate federal revisions at 82 FR 32644, July 17, 2017, by reference.

Regulation 61-62.61, Subpart W, “National Emission Standards for Radon Emissions from Operating Mill Tailings”:

Subpart W, Table, is amended to incorporate federal revisions at 82 FR 5142, January 17, 2017, by reference.

Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories

Regulation 61-62.63, Subpart A, “General Provisions”:

Subpart A, Table, is amended to incorporate federal revisions at 82 FR 5401, January 18, 2017; 82 FR 47328, October 11, 2017; and 82 FR 48156, October 16, 2017, by reference.

Regulation 61-62.63, Subpart AA, “National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants”:

Subpart AA, Table, is amended to incorporate federal revisions at 82 FR 45193, September 28, 2017, by reference.

Regulation 61-62.63, Subpart BB, “National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizer Production Plants”:

Subpart BB, Table, is amended to incorporate federal revisions at 82 FR 45193, September 28, 2017, by reference.

Regulation 61-62.63, Subpart MM, “National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills”:

Subpart MM, Table, is amended to incorporate federal revisions at 82 FR 47328, October 11, 2017, by reference.

Regulation 61-62.63, Subpart LLL, “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry”:

Subpart LLL, Table, is amended to incorporate federal revisions at 82 FR 28562, June 23, 2017; and 82 FR 39671, August 22, 2017, by reference.

Regulation 61-62.63, Subpart NNN, “National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing”:

Subpart NNN, Table, is amended to incorporate federal revisions at 82 FR 60873, December 26, 2017, by reference.

Regulation 61-62.63, Subpart VVV, “National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works”:

Subpart VVV, Table, is amended to incorporate federal revisions at 82 FR 49513, October 26, 2017, by reference.

Regulation 61-62.63, Subpart XXX, “National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese”:

Subpart XXX, Table, is amended to incorporate federal revisions at 82 FR 5401, January 18, 2017, by reference.

Regulation 61-62.63, Subpart CCCC, “National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast”:

Subpart CCCC, Table, is amended to incorporate federal revisions at 82 FR 48156, October 16, 2017, by reference.

Regulation 61-62.63, Subpart UUUUU, “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units”:

Subpart UUUUU, Table, is amended to incorporate federal revisions at 82 FR 16736, April 6, 2017, by reference.

Regulation 61-62.68, Chemical Accident Prevention Provisions

Regulation 61-62.68, Section 68.1, Scope:

Section 68.1, Scope, is amended to insert the words "Clean Air" between “section 112(r) of the” and “Act.” for clarity.

Regulation 61-62.68, Section 68.3, Definitions:

Paragraph (e) is amended to strike the word “if” and replace it with the word “is” for consistency with the federal regulation.

Regulation 61-62.68, Section 68.115, Threshold determination:

Paragraph (a) is amended to strike the section symbol “§” and replace with the word “Section” to provide clarity and consistency.

Regulation 61-62.68, Section 68.126, Exclusion:

Section 68.126, Exclusion, is amended to strike the section symbol “§” and replace with the word “Section” to provide clarity and consistency.

Regulation 61-62.68, Section 68.130, List of Substances:

Tables 1, 2, 3 and 4 are amended by correcting errors in chemical nomenclature and an incorrect CAS number in Table 1. Footnote 1 to Tables 3 and 4 is also amended to strike the section symbol “§” and replace it with the word “Section” to provide clarity and consistency.

Regulation 61-62.68, Section 68.220, Audits:

Paragraph (d) is amended to strike the citation “(b)(2)” and replace with “(c)(2)”, and strike the citation “(b)(7)” and replace with “(c)(7)” for correct codification.

Regulation 61-62.68, Section 68.220, Audits:

Paragraph (g)(1) is amended to strike the citation “(e)” and replace with “(f)” for correct codification.

Regulation 61-62.68, Section 68.220, Audits:

Paragraph (g)(2) is amended to strike the citation “(f)(1)” and replace with “(g)(1)” for correct codification, and replace “90” with “ninety (90)” for consistency.

Regulation 61-62.68, Section 68.220, Audits:

Paragraph (h) is amended to strike the three citations to paragraph “(f)” and replace each with “(g)”, and strike the citation “(e)” and replace with “(f)” for correct codification.

Regulation 61-62.68, Section 68.220, Audits:

Paragraph (i) is amended to strike the citation “(g)” and replace with “(h)” for correct codification, and replace “Thirty” with “Thirty (30)” for consistency.

Appendix A to Part 68 is amended by correcting errors in chemical nomenclature.

Regulation 61-62.70, Title V Operating Permit Program

Regulation 61-62.70, Section 70.3, Applicability:

Paragraph (a)(6) is stricken in its entirety to maintain compliance with federal regulations adopted at 70 FR 75320.

Regulation 61-62.96, Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program

Regulation 61-62.96, Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program, is amended by: revising the title of the regulation to “Nitrogen Oxides (NO_x) Budget Program”, striking two paragraphs of introductory text, adding new Subparts A through I, and striking existing Subparts AA through II, Subparts AAA through III, and Subparts AAAA through IIII.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comment(s) on the proposed amendments to Roger Jerry in the Bureau of Air Quality, South Carolina Department of Health and Environmental Control, 2600 Bull Street,

Columbia, S.C. 29201; by fax at 803-898-4117; or by email at jerryre@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on December 27, 2018, the close of the public comment period. Comments received during the write-in public comment period by the deadline set forth above will be submitted by the Bureau to the S.C. Board of Health and Environmental Control (“Board”) in a Summary of Public Comments and Department Responses for the Board’s consideration at the public hearing.

The Board will conduct a public hearing on the proposed amendments during its January 3, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

Statement of Need and Reasonableness

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Amendment of R.61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP).

Purpose: The EPA promulgated amendments to national air quality standards in 2017. The recent federal amendments include clarification, guidance, and technical revisions to SIP requirements promulgated pursuant to 42 U.S.C. Sections 7410 and 7413; New Source Performance Standards (NSPS) mandated by 42 U.S.C. Section 7411; federal National Emission Standards for Hazardous Air Pollutants (NESHAP) mandated by 42 U.S.C. Section 7412; and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories mandated by 42 U.S.C. Section 7412. The Department, therefore, proposes amending the aforementioned regulations and SIP to codify federal amendments to these standards promulgated from January 1, 2017, through December 31, 2017. Additionally, the Department proposes amending R.61-62.96 due to sunsetted requirements no longer in effect and replaced by R.61-97, and continuing federal requirements under the NO_x SIP Call. The Department also proposes corrections to R.61-62.68 for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary and to maintain compliance with federal law.

Legal Authority: 1976 Code Sections 48-1-10 et seq.

Plan for Implementation: The proposed amendments will take effect upon approval by the Board of Health and Environmental Control and publication in the State Register. These requirements are in place at the federal level and are currently being implemented. The proposed amendments will be implemented in South Carolina by providing the regulated community with copies of the regulation, publishing associated information on the Department’s website at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/>, sending an email to stakeholders, and communicating with affected facilities during the permitting process.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The EPA promulgates amendments to its air quality regulations throughout each calendar year. Federal amendments in 2017 included revised NSPS rules, NESHAPs, and NESHAPs for Source Categories. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure compliance with both state and federal regulations. The proposed amendments also serve to amend a regulation to reflect the sunset of federal CAIR requirements that are no longer in force, and to continue federal requirements under the NO_x SIP Call. The proposed amendments also include corrections for internal consistency, clarification, chemical nomenclature, codification, spelling, and overall improvement of the text as necessary to ensure compliance with federal law.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the state or its political subdivisions resulting from these proposed revisions. The standards to be adopted are already in effect and applicable to the regulated community as a matter of federal law, thus the amendments do not present a new cost to the regulated community. The proposed amendments incorporate the revisions to the EPA regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The proposed amendments will benefit the regulated community by clarifying and updating the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the proposed amendments to R.61-62 will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The state's authority to implement federal requirements, which are beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Text:

~~Indicates Matter Stricken~~

Indicates New Matter

Text of Proposed Amendments:

Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards

Regulation 61-62.60, Subpart A, shall be revised as follows:

Subpart A - "General Provisions"

The provisions of 40 Code of Federal Regulations (CFR) Part 60 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 38	October 15, 1973	[38 FR 28565]
Revision	Vol. 39	March 8, 1974	[39 FR 9314]
Revision	Vol. 39	November 12, 1974	[39 FR 39873]
Revision	Vol. 40	April 25, 1975	[40 FR 18169]
Revision	Vol. 40	October 6, 1975	[40 FR 46254]
Revision	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 40	December 16, 1975	[40 FR 58418]
Revision	Vol. 40	December 22, 1975	[40 FR 59205]
Revision	Vol. 41	August 20, 1976	[41 FR 35185]
Revision	Vol. 42	July 19, 1977	[42 FR 37000]
Revision	Vol. 42	July 27, 1977	[42 FR 38178]
Revision	Vol. 42	November 1, 1977	[42 FR 57126]
Revision	Vol. 43	March 3, 1978	[43 FR 8800]
Revision	Vol. 43	August 3, 1978	[43 FR 34347]
Revision	Vol. 44	June 11, 1979	[44 FR 33612]
Revision	Vol. 44	September 25, 1979	[44 FR 55173]
Revision	Vol. 45	January 23, 1980	[45 FR 5617]
Revision	Vol. 45	April 4, 1980	[45 FR 23379]
Revision	Vol. 45	December 24, 1980	[45 FR 85415]
Revision	Vol. 47	January 8, 1982	[47 FR 951]
Revision	Vol. 47	July 23, 1982	[47 FR 31876]
Revision	Vol. 48	March 30, 1983	[48 FR 13326]
Revision	Vol. 48	May 25, 1983	[48 FR 23610]
Revision	Vol. 48	July 20, 1983	[48 FR 32986]
Revision	Vol. 48	October 18, 1983	[48 FR 48335]
Revision	Vol. 50	December 27, 1985	[50 FR 53113]
Revision	Vol. 51	January 15, 1986	[51 FR 1790]
Revision	Vol. 51	January 21, 1986	[51 FR 2701]
Revision	Vol. 51	November 25, 1986	[51 FR 42796]
Revision	Vol. 52	March 26, 1987	[52 FR 9781, 9782]
Revision	Vol. 52	April 8, 1987	[52 FR 11428]
Revision	Vol. 52	May 11, 1987	[52 FR 17555]
Revision	Vol. 52	June 4, 1987	[52 FR 21007]
Revision	Vol. 54	February 14, 1989	[54 FR 6662]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	December 13, 1990	[55 FR 51382]
Revision	Vol. 57	July 21, 1992	[57 FR 32338, 32339]
Revision	Vol. 59	March 16, 1994	[59 FR 12427, 12428]
Revision	Vol. 59	September 15, 1994	[59 FR 47265]

40 CFR Part 60 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 61	March 12, 1996	[61 FR 9919]
Revision	Vol. 62	February 24, 1997	[62 FR 8328]
Revision	Vol. 62	September 15, 1997	[62 FR 48348]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 64	February 12, 1999	[64 FR 7463]
Revision	Vol. 65	August 10, 2000	[65 FR 48914]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 6, 2000	[65 FR 76350, 76378]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	February 6, 2001	[66 FR 9034]
Revision	Vol. 67	June 28, 2002	[67 FR 43550]
Revision	Vol. 68	April 14, 2003	[68 FR 17990]
Revision	Vol. 68	May 28, 2003	[68 FR 31611]
Revision	Vol. 69	July 8, 2004	[69 FR 41346]
Revision	Vol. 70	December 16, 2005	[70 FR 74870]
Revision	Vol. 71	June 1, 2006	[71 FR 31100]
Revision	Vol. 71	July 6, 2006	[71 FR 38482]
Revision	Vol. 72	May 16, 2007	[72 FR 27437]
Revision	Vol. 72	June 13, 2007	[72 FR 32710]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	April 3, 2008	[73 FR 18162]
Revision	Vol. 73	May 6, 2008	[73 FR 24870]
Revision	Vol. 73	May 27, 2008	[73 FR 30308]
Revision	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	January 28, 2009	[74 FR 5072]
Revision	Vol. 74	October 6, 2009	[74 FR 51368]
Revision	Vol. 74	October 8, 2009	[74 FR 51950]
Revision	Vol. 74	December 17, 2009	[74 FR 66921]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 76	March 21, 2011	[76 FR 15372]
Revision	Vol. 76	March 21, 2011	[76 FR 15704]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	August 14, 2012	[77 FR 48433]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 79	April 4, 2014	[79 FR 18952]
Revision	Vol. 80	March 16, 2015	[80 FR 13671]
Revision	Vol. 81	June 3, 2016	[81 FR 35824]
Revision	Vol. 81	June 30, 2016	[81 FR 42542]

40 CFR Part 60 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 81	August 29, 2016	[81 FR 59276, 59332]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	June 23, 2017	[82 FR 28561]
Revision	Vol. 82	July 17, 2017	[82 FR 32644]

Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)

Regulation 61-62.61, Subpart A, shall be revised as follows:

Subpart A - “General Provisions”

The provisions of 40 Code of Federal Regulations (CFR) Part 61 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 61 Subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 38	April 6, 1973	[38 FR 8826]
Revision	Vol. 40	April 25, 1975	[40 FR 18170]
Revision	Vol. 40	October 14, 1975	[40 FR 48299]
Revision	Vol. 42	September 29, 1977	[42 FR 51574]
Revision	Vol. 44	September 25, 1979	[44 FR 55174]
Revision	Vol. 48	January 27, 1983	[48 FR 3740]
Revision	Vol. 48	December 9, 1983	[48 FR 55266]
Revision	Vol. 49	June 6, 1984	[49 FR 23520]
Revision	Vol. 50	November 7, 1985	[50 FR 46290]
Revision	Vol. 50	November 7, 1985	[50 FR 46291]
Revision	Vol. 50	November 7, 1985	[50 FR 46292]
Revision	Vol. 50	November 7, 1985	[50 FR 46293]
Revision	Vol. 50	November 7, 1985	[50 FR 46294]
Revision	Vol. 51	March 5, 1986	[51 FR 7715]
Revision	Vol. 51	March 5, 1986	[51 FR 7719]
Revision	Vol. 51	April 1, 1986	[51 FR 11022]
Revision	Vol. 51	September 30, 1986	[51 FR 34914]
Revision	Vol. 52	October 8, 1987	[52 FR 37617]
Revision	Vol. 54	September 14, 1989	[54 FR 38073]
Revision	Vol. 54	December 15, 1989	[54 FR 51704]
Revision	Vol. 55	March 7, 1990	[55 FR 8341]
Revision	Vol. 55	May 2, 1990	[55 FR 18331]
Revision	Vol. 55	May 31, 1990	[55 FR 22027]
Revision	Vol. 55	August 13, 1990	[55 FR 32914]
Revision	Vol. 57	January 13, 1992	[57 FR 1226]
Revision	Vol. 57	March 5, 1992	[57 FR 8016]
Revision	Vol. 58	January 7, 1993	[58 FR 3105]

40 CFR Part 61 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 58	January 21, 1993	[58 FR 5299]
Revision	Vol. 58	April 7, 1993	[58 FR 18014]
Revision	Vol. 59	March 11, 1994	[59 FR 11554]
Revision	Vol. 59	March 16, 1994	[59 FR 12408]
Revision	Vol. 59	June 17, 1994	[59 FR 31157]
Revision	Vol. 59	July 15, 1994	[59 FR 36280]
Revision	Vol. 60	March 15, 1995	[60 FR 13912]
Revision	Vol. 60	August 21, 1995	[60 FR 43396]
Revision	Vol. 60	September 5, 1995	[60 FR 46206]
Revision	Vol. 60	September 28, 1995	[60 FR 50244]
Revision	Vol. 61	December 30, 1996	[61 FR 68972]
Revision	Vol. 62	January 14, 1997	[62 FR 1832]
Revision	Vol. 62	February 24, 1997	[62 FR 8314]
Revision	Vol. 63	December 1, 1998	[63 FR 66054]
Revision	Vol. 64	February 3, 1999	[64 FR 5574]
Revision	Vol. 64	February 12, 1999	[64 FR 7458]
Revision	Vol. 64	May 6, 1999	[64 FR 24288]
Revision	Vol. 65	February 28, 2000	[65 FR 10391]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	June 15, 2001	[66 FR 32545]
Revision	Vol. 66	August 13, 2001	[66 FR 42425, 42427]
Revision	Vol. 66	September 19, 2001	[66 FR 48211]
Revision	Vol. 67	January 23, 2002	[67 FR 3106]
Revision	Vol. 67	March 14, 2002	[67 FR 11417]
Revision	Vol. 67	April 26, 2002	[67 FR 20652]
Revision	Vol. 67	June 10, 2002	[67 FR 39622]
Revision	Vol. 67	September 9, 2002	[67 FR 57159]
Revision	Vol. 67	October 7, 2002	[67 FR 62395]
Revision	Vol. 68	April 7, 2003	[68 FR 16726]
Revision	Vol. 68	May 28, 2003	[68 FR 31611]
Revision	Vol. 68	June 17, 2003	[68 FR 35792]
Revision	Vol. 68	December 11, 2003	[68 FR 69036]
Revision	Vol. 69	March 26, 2004	[69 FR 15687]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 72	May 16, 2007	[72 FR 27437]
Revision	Vol. 73	April 3, 2008	[73 FR 18162]
Revision	Vol. 73	May 6, 2008	[73 FR 24870]
Revision	Vol. 74	October 27, 2009	[74 FR 55142]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	July 17, 2017	[82 FR 32644]

Regulation 61-62.61, Subpart W, shall be revised as follows:

Subpart W - “National Emission Standards for Radon Emissions from Operating Mill Tailings”

The provisions of 40 CFR Part 61 Subpart W, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 61 Subpart W			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 54	December 15, 1989	[54 FR 51703]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 82	January 17, 2017	[82 FR 5142]

Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories

Regulation 61-62.63, Subpart A, shall be revised as follows:

Subpart A - “General Provisions”

The provisions of 40 Code of Federal Regulations (CFR) Part 63 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 59	March 16, 1994	[59 FR 12430]
Revision	Vol. 59	April 22, 1994	[59 FR 19453]
Revision	Vol. 59	December 6, 1994	[59 FR 62589]
Revision	Vol. 60	January 25, 1995	[60 FR 4963]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 60	September 1, 1995	[60 FR 45980]
Revision	Vol. 61	May 21, 1996	[61 FR 25399]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 62	December 10, 1997	[62 FR 65024]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 63	May 13, 1998	[63 FR 26465]
Revision	Vol. 63	September 21, 1998	[63 FR 50326]
Revision	Vol. 63	October 7, 1998	[63 FR 53996]
Revision	Vol. 63	December 1, 1998	[63 FR 66061]
Revision	Vol. 64	January 28, 1999	[64 FR 4300]
Revision	Vol. 64	February 12, 1999	[64 FR 7468]
Revision	Vol. 64	April 12, 1999	[64 FR 17562]
Revision	Vol. 64	June 10, 1999	[64 FR 31375]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]

40 CFR Part 63 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 67	February 14, 2002	[67 FR 6968]
Revision	Vol. 67	February 27, 2002	[67 FR 9156]
Revision	Vol. 67	April 5, 2002	[67 FR 16582]
Revision	Vol. 67	June 10, 2002	[67 FR 39794]
Revision	Vol. 67	July 23, 2002	[67 FR 48254]
Revision	Vol. 68	February 18, 2003	[68 FR 7706]
Revision	Vol. 68	April 21, 2003	[68 FR 19375]
Revision	Vol. 68	May 6, 2003	[68 FR 23898]
Revision	Vol. 68	May 8, 2003	[68 FR 24653]
Revision	Vol. 68	May 20, 2003	[68 FR 27646]
Revision	Vol. 68	May 23, 2003	[68 FR 28606]
Revision	Vol. 68	May 27, 2003	[68 FR 28774]
Revision	Vol. 68	May 28, 2003	[68 FR 31746]
Revision	Vol. 68	May 29, 2003	[68 FR 32172]
Revision	Vol. 68	May 30, 2003	[68 FR 32586]
Revision	Vol. 68	November 13, 2003	[68 FR 64432]
Revision	Vol. 68	December 19, 2003	[68 FR 70960]
Revision	Vol. 69	January 2, 2004	[69 FR 130]
Revision	Vol. 69	February 3, 2004	[69 FR 5038]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 69	April 19, 2004	[69 FR 20968]
Revision	Vol. 69	April 22, 2004	[69 FR 21737]
Revision	Vol. 69	April 26, 2004	[69 FR 22602]
Revision	Vol. 69	June 15, 2004	[69 FR 33474]
Revision	Vol. 69	July 30, 2004	[69 FR 45944]
Revision	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	April 15, 2005	[70 FR 19992]
Revision	Vol. 70	May 20, 2005	[70 FR 29400]
Revision	Vol. 70	October 12, 2005	[70 FR 59402]
Revision	Vol. 71	February 16, 2006	[71 FR 8342]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 71	July 28, 2006	[71 FR 42898]
Revision	Vol. 71	December 6, 2006	[71 FR 70651]
Revision	Vol. 72	January 3, 2007	[72 FR 26]
Revision	Vol. 72	January 23, 2007	[72 FR 2930]
Revision	Vol. 72	July 16, 2007	[72 FR 38864]
Revision	Vol. 72	October 29, 2007	[72 FR 61060]
Revision	Vol. 72	November 16, 2007	[72 FR 64860]
Revision	Vol. 72	December 26, 2007	[72 FR 73180]
Revision	Vol. 72	December 28, 2007	[72 FR 74088]
Revision	Vol. 73	January 2, 2008	[73 FR 226]
Revision	Vol. 73	January 9, 2008	[73 FR 1738]
Revision	Vol. 73	January 10, 2008	[73 FR 1916]

40 CFR Part 63 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	February 7, 2008	[73 FR 7210]
Revision	Vol. 73	March 7, 2008	[73 FR 12275]
Revision	Vol. 73	July 23, 2008	[73 FR 42978]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	June 25, 2009	[74 FR 30366]
Revision	Vol. 74	October 28, 2009	[74 FR 55670]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	February 17, 2011	[76 FR 9450]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 17, 2012	[77 FR 22848]
Revision	Vol. 77	September 11, 2012	[77 FR 55698]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 78	February 1, 2013	[78 FR 7488]
Revision	Vol. 78	June 20, 2013	[78 FR 37133]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 79	March 27, 2014	[79 FR 17340]
Revision	Vol. 80	June 30, 2015	[80 FR 37365]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]
Revision	Vol. 80	September 18, 2015	[80 FR 56699]
Revision	Vol. 80	October 15, 2015	[80 FR 62389]
Revision	Vol. 80	October 26, 2015	[80 FR 65469]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 80	December 4, 2015	[80 FR 75817]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	January 18, 2017	[82 FR 5401]
Revision	Vol. 82	October 11, 2017	[82 FR 47328]
Revision	Vol. 82	October 16, 2017	[82 FR 48156]

Regulation 61-62.63, Subpart AA, shall be revised as follows:

Subpart AA - “National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants”

The provisions of 40 CFR Part 63 Subpart AA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart AA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31376]
Revision	Vol. 66	December 17, 2001	[66 FR 65072]

40 CFR Part 63 Subpart AA			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 67	June 12, 2002	[67 FR 40578]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]
Revision	Vol. 82	September 28, 2017	[82 FR 45193]

Regulation 61-62.63, Subpart BB, shall be revised as follows:

Subpart BB - “National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizer Production Plants”

The provisions of 40 CFR Part 63 Subpart BB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart BB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31382]
Revision	Vol. 66	December 17, 2001	[66 FR 65072]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]
Revision	Vol. 82	September 28, 2017	[82 FR 45193]

Regulation 61-62.63, Subpart MM, shall be revised as follows:

Subpart MM - “National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills”

The provisions of 40 CFR Part 63 Subpart MM, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart MM			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 66	January 12, 2001	[66 FR 3180]
Revision	Vol. 66	March 26, 2001	[66 FR 16400]
Revision	Vol. 66	July 19, 2001	[66 FR 37591]
Revision	Vol. 66	August 6, 2001	[66 FR 41086]
Revision	Vol. 68	February 18, 2003	[68 FR 7706]
Revision	Vol. 68	May 8, 2003	[68 FR 24653]
Revision	Vol. 68	July 18, 2003	[68 FR 42603]
Revision	Vol. 68	December 5, 2003	[68 FR 67953]

40 CFR Part 63 Subpart MM			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 69	May 6, 2004	[69 FR 25321]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 82	October 11, 2017	[82 FR 47328]

Regulation 61-62.63, Subpart LLL, shall be revised as follows:

Subpart LLL - “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry”

The provisions of 40 CFR Part 63 Subpart LLL, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart LLL			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31898]
Revision	Vol. 64	September 30, 1999	[64 FR 52828]
Revision	Vol. 67	April 5, 2002	[67 FR 16614]
Revision	Vol. 67	December 6, 2002	[67 FR 72580]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	December 20, 2006	[71 FR 76518]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 78	February 12, 2013	[78 FR 10006]
Revision	Vol. 80	July 27, 2015	[80 FR 44771]
Revision	Vol. 80	September 11, 2015	[80 FR 54728]
Revision	Vol. 81	July 25, 2016	[81 FR 48356]
Revision	Vol. 82	June 23, 2017	[82 FR 28562]
Revision	Vol. 82	August 22, 2017	[82 FR 39671]

Regulation 61-62.63, Subpart NNN, shall be revised as follows:

Subpart NNN - “National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing”

The provisions of 40 CFR Part 63 Subpart NNN, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart NNN			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31695]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	July 29, 2015	[80 FR 45279]

40 CFR Part 63 Subpart NNN			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 82	December 26, 2017	[82 FR 60873]

Regulation 61-62.63, Subpart VVV, shall be revised as follows:

Subpart VVV - “National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works”

The provisions of 40 CFR Part 63 Subpart VVV, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart VVV			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	October 26, 1999	[64 FR 57572]
Revision	Vol. 66	March 23, 2001	[66 FR 16140]
Revision	Vol. 67	October 10, 2002	[67 FR 64742]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 82	October 26, 2017	[82 FR 49513]

Regulation 61-62.63, Subpart XXX, shall be revised as follows:

Subpart XXX - “National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese”

The provisions of 40 CFR Part 63 Subpart XXX, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart XXX			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	May 20, 1999	[64 FR 27458]
Revision	Vol. 66	March 22, 2001	[66 FR 16007]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	June 30, 2015	[80 FR 37365]
Revision	Vol. 82	January 18, 2017	[82 FR 54011]

Regulation 61-62.63, Subpart CCCC, shall be revised as follows:

Subpart CCCC - “National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast”

The provisions of 40 CFR Part 63 Subpart CCCC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart CCCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 66	May 21, 2001	[66 FR 27876]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 82	October 16, 2017	[82 FR 48156]

Regulation 61-62.63, Subpart UUUUU, shall be revised as follows:

Subpart UUUUU - “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units”

The provisions of 40 CFR Part 63 Subpart UUUUU, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart UUUUU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 19, 2012	[77 FR 23399]
Revision	Vol. 77	August 2, 2012	[77 FR 45967]
Revision	Vol. 78	April 24, 2013	[78 FR 24073]
Revision	Vol. 79	November 19, 2014	[79 FR 68777, 68795]
Revision	Vol. 80	March 24, 2015	[80 FR 15510]
Revision	Vol. 81	April 6, 2016	[81 FR 20172]
Revision	Vol. 82	April 6, 2017	[82 FR 16736]

Regulation 61-62.68, Chemical Accident Prevention Provisions

Regulation 61-62.68.1 shall be revised as follows:

This part sets forth the list of regulated substances and thresholds, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the State accidental release prevention programs approved under section 112(r) of the **Clean Air** Act. The list of substances, threshold quantities, and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)(1) of the Act.

Regulation 61-62.68.3 (e) shall be revised as follows:

(e) “Article” means a manufactured item, as defined under 29 CFR 1910.1200(b), that **if is** formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

Regulation 61-62.68.115 (a) shall be revised as follows:

(a) A threshold quantity of a regulated substance listed in **§Section** 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

Regulation 61-62.68.126 shall be revised as follows:

Flammable substances used as fuel or held for sale as fuel at retail facilities. A flammable substance listed in Tables 3 and 4 of §Section 68.130 is nevertheless excluded from all provisions of this part when the substance is used as a fuel or held for sale as a fuel at a retail facility.

TABLE 1 to Regulation 61-62.68.130 shall be revised as follows:

TABLE 1 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 77 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Acrolein [2-Propenal] [2-Propenal]	107-02-8	5,000	B
Acrylonitrile [2-Propenenitrile]	107-13-1	20,000	B
Acrylyl chloride [2-Propenoyl chloride]	814-68-6	5,000	B
Allyl alcohol [2-Propen-1-ol]	107-18-6 4	15,000	B
Allylamine [2-Propen-1-amine] [2-Propen-1-amine]	107-11-9	10,000	B
Ammonia (anhydrous)	7664-41-7	10,000	a, b
Ammonia (conc. 20% or greater)	7664-41-7	20,000	a, b
Arsenous trichloride	7784-34-1	15,000	B
Arsine	7784-42-1	1,000	B
Boron trichloride [Borane, trichloro-]	10294-34-5	5,000	B
Boron trifluoride [Borane, trifluoro-]	7637-07-2	5,000	B
Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro [oxybis [metane]], T-4- [Boron, trifluoro[oxybis[methane]], (T-4)-]	353-42-4	15,000	B
Bromine	7726-95-6	10,000	a, b
Carbon disulfide	75-15-0	20,000	B
Chlorine	7782-50-5	2,500	a, b
Chlorine dioxide [Chlorine oxide (ClO)(ClO ₂)]	10049-04-4	1,000	C
Chloroform [Methane, trichloro-]	67-66-3	20,000	B
Chloromethyl ether [Methane, oxybis[chloro-]	542-88-1	1,000	B
Chloromethyl methyl ether [Methane, chloromethoxy-]	107-30-2	5,000	b

TABLE 1 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 77 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Crotonaldehyde [2-Butenal]	4170-30-3	20,000	B
Crotonaldehyde, (E)- [2-Butenal, (E)-]	123-73-9	20,000	B
Cyanogen chloride	506-77-4	10,000	C
Cyclohexylamine [Cyclohexanamine]	108-91-8	15,000	B
Diborane	19287-45-7	2,500	B
Dimethyldichlorosilane [Silane, dichlorodimethyl-]	75-78-5	5,000	B
1,1-Dimethylhydrazine 1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	57-14-7	15,000	B
Epichlorohydrin [Oxirane, (chloromethyl)-]	106-89-8	20,000	B
Ethylenediamine [1,2-Ethanediamine] [1,2-Ethanediamine]	107-15-3	20,000	B
Ethyleneimine [Aziridine]	151-56-4	10,000	B
Ethylene oxide [Oxirane]	75-21-8	10,000	a, b
Fluorine	7782-41-4	1,000	B
Formaldehyde (solution)	50-00-0	15,000	B
Furan	110-00-9	5,000	B
Hydrazine	302-01-2	15,000	B
Hydrochloric acid (conc. 37% or greater)	7647-01-0	15,000	D
Hydrocyanic acid	74-90-8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid]	7647-01-0	5,000	A
Hydrogen fluoride/ Hydrofluoric acid (conc. 50% or greater) [Hydrofluoric acid]	7664-39-3	1,000	a, b
Hydrogen selenide	7783-07-5	500	B
Hydrogen sulfide	7783-06-4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)₅), (TB-5-11)-] [Iron carbonyl (Fe(CO)₅), (TB-5-11)-]	13463-40-6	2,500	B
Isobutyronitrile [Propanenitrile, 2-methyl-]	78-82-0	20,000	B
Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester]	108-23-6	15,000	b

TABLE 1 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 77 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Methacrylonitrile [2-Propenenitrile, 2-methyl-] [2-Propenenitrile, 2-methyl-]	126-98-7	10,000	B
Methyl chloride [Methane, chloro-]	74-87-3	10,000	A
Methyl chloroformate [Carbonylchloridic acid, methyl ester] [Carbonylchloridic acid, methyl ester]	79-22-1	5,000	B
Methyl hydrazine [Hydrazine, methyl-]	60-34-4	15,000	B
Methyl isocyanate [Methane, isocyanato-]	624-83-9	10,000	a, b
Methyl mercaptan [Methanethiol]	74-93-1	10,000	B
Methyl thiocyanate [Thiocyanic acid, methyl ester]	556-64-9	20,000	B
Methyltrichlorosilane [Silane, trichloromethyl-]	75-79-6	5,000	B
Nickel carbonyl	13463-39-3	1,000	B
Nitric acid (conc. 80% or greater)	7697-37-2	15,000	B
Nitric oxide [Nitrogen oxide (NO)]	10102-43-9	10,000	B
Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] ¹	8014-95-7	10,000	E
Peracetic acid [Ethaneperoxoic acid]	79-21-0	10,000	B
Perchloromethyl mercaptan Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	594-42-3	10,000	B
Phosgene [Carbonic dichloride]	75-44-5	500	a, b
Phosphine	7803-51-2	5,000	B
Phosphorus oxychloride [Phosphoryl chloride]	10025-87-3	5,000	B
Phosphorus trichloride [Phosphorous trichloride]	7719-12-2	15,000	B
Piperidine	110-89-4	15,000	B
Propionitrile [Propanenitrile]	107-12-0	10,000	B
Propyl chloroformate [Carbonylchloridic acid, propylester] [Carbonylchloridic acid, propyl ester]	109-61-5	15,000	B
Propyleneimine [Aziridine, 2-methyl-] [Aziridine, 2-methyl-]	75-55-8	10,000	B
Propylene oxide [Oxirane, methyl-]	75-56-9	10,000	B
Sulfur dioxide (anhydrous)	7446-09-5	5,000	a, b

TABLE 1 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 77 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Sulfur tetrafluoride [Sulfur fluoride (SF4) (SF ₄), (T-4)-]	7783-60-0	2,500	B
Sulfur trioxide	7446-11-9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-]	75-74-1	10,000	B
Tetranitromethane [Methane, tetranitro-]	509-14-8	10,000	B
Titanium tetrachloride [Titanium chloride (TiCl4) (TiCl ₄), (T-4)-]	7550-45-0	2,500	B
Toluene 2,4-diisocyanate Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] [Benzene, 2,4-diisocyanato-1-methyl-] ¹	584-84-9	10,000	A
Toluene 2,6-diisocyanate Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] [Benzene, 1,3-diisocyanato-2-methyl-] ¹	91-08-7	10,000	A
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] [Benzene, 1,3-diisocyanatomethyl-] ¹	26471-62-5	10,000	A
Trimethylchlorosilane [Silane, chlorotrimethyl-]	75-77-4	10,000	B
Vinyl acetate monomer [Acetic acid ethenyl ester]	108-05-4	15,000	B

¹ The mixture exemption in Section 68.115(b)(1) does not apply to the substance

NOTE: Basis for Listing:

a Mandated for listing by Congress

b On EHS list, vapor pressure 10 mmHg or greater

c Toxic gas

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents

TABLE 2 to Regulation 61-62.68.130 shall be revised as follows:

TABLE 2 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 77 Substances]			
CAS Number	Chemical Name	Threshold Quantity (lbs)	Basis for Listing
50-00-0	Formaldehyde (solution)	15,000	B
57-14-7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	15,000	B
60-34-4	Methyl hydrazine [Hydrazine, methyl-]	15,000	B

TABLE 2 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 77 Substances]			
CAS Number	Chemical Name	Threshold Quantity (lbs)	Basis for Listing
67-66-3	Chloroform [Methane, trichloro-]	20,000	B
74-87-3	Methyl chloride [Methane, chloro-]	10,000	A
74-90-8	Hydrocyanic acid	2,500	a, b
74-93-1	Methyl mercaptan [Methanethiol]	10,000	B
75-15-0	Carbon disulfide	20,000	B
75-21-8	Ethylene oxide [Oxirane]	10,000	a, b
75-44-5	Phosgene [Carbonic dichloride]	500	a, b
75-55-8	Propyleneimine [Aziridine, 2-methyl-]	10,000	B
75-56-9	Propylene oxide [Oxirane, methyl-]	10,000	B
75-74-1	Tetramethyllead [Plumbane, tetramethyl-]	10,000	B
75-77-4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	10,000	B
75-78-5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	5,000	B
75-79-6	Methyltrichlorosilane [Silane, trichloromethyl-]	5,000	B
78-82-0	Isobutyronitrile [Propanenitrile, 2-methyl-]	20,000	B
79-21-0	Peracetic acid [Ethaneperoxoic acid]	10,000	B
79-22-1	Methyl chloroformate [Carbonochloridic acid, methyl ester] [Carbonochloridic acid, methyl ester]	5,000	B
91-08-7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] ¹	10,000	A
106-89-8	Epichlorohydrin [Oxirane, (chloromethyl)-]	20,000	B
107-02-8	Acrolein [2-Propenal]	5,000	B
107-11-9	Allylamine [2-Propen-1-amine]	10,000	B
107-12-0	Propionitrile [Propanenitrile]	10,000	B
107-13-1	Acrylonitrile [2-Propenenitrile]	20,000	B
107-15-3	Ethylenediamine [1,2-Ethanediamine]	20,000	B
107-18-6	Allyl alcohol [2-Propen-1-ol]	15,000	B
107-30-2	Chloromethyl methyl ether [Methane, chloromethoxy-]	5,000	B

TABLE 2 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 77 Substances]			
CAS Number	Chemical Name	Threshold Quantity (lbs)	Basis for Listing
108-05-4	Vinyl acetate monomer [Acetic acid ethenyl ester]	15,000	B
108-23-6	Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester]	15,000	B
108-91-8	Cyclohexylamine [Cyclohexanamine]	15,000	B
109-61-5	Propyl chloroformate [Carbonochloridic acid, propylester] [Carbonochloridic acid, propyl ester]	15,000	B
110-00-9	Furan	5,000	B
110-89-4	Piperidine	15,000	B
123-73-9	Crotonaldehyde, (E)- [2-Butenal, (E)-]	20,000	B
126-98-7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	10,000	B
151-56-4	Ethyleneimine [Aziridine]	10,000	B
302-01-2	Hydrazine	15,000	B
353-42-4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxy bis[methane]]], T-4 [Boron, trifluoro[oxybis[methane]]], (T-4)-]	15,000	B
506-77-4	Cyanogen chloride	10,000	C
509-14-8	Tetranitromethane [Methane, tetranitro-]	10,000	B
542-88-1	Chloromethyl ether [Methane, oxybis[chloro-]	1,000	B
556-64-9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	20,000	B
584-84-9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] ¹	10,000	A
594-42-3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	10,000	B
624-83-9	Methyl isocyanate [Methane, isocyanato-]	10,000	a, b
814-68-6	Acrylyl chloride [2-Propenoyl chloride]	5,000	B
4170-30-3	Crotonaldehyde [2-Butenal]	20,000	B
7446-09-5	Sulfur dioxide (anhydrous)	5,000	a, b
7446-11-9	Sulfur trioxide	10,000	a, b
7550-45-0	Titanium tetrachloride [Titanium chloride (TiCl4) (TiCl4), (T-4)-]	2,500	B
7637-07-2	Boron trifluoride [Borane, trifluoro-]	5,000	B

TABLE 2 - LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 77 Substances]			
CAS Number	Chemical Name	Threshold Quantity (lbs)	Basis for Listing
7647-01-0	Hydrochloric acid (conc. 37% or greater)	15,000	D
7647-01-0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	5,000	A
7664-39-3	Hydrogen fluoride/Hydrofluoric acid (conc. 50% or greater) [Hydrofluoric acid]	1,000	a, b
7664-41-7	Ammonia (anhydrous)	10,000	a, b
7664-41-7	Ammonia (conc. 20% or greater)	20,000	a, b
7697-37-2	Nitric acid (conc. 80% or greater)	15,000	B
7719-12-2	Phosphorus trichloride [Phosphorous trichloride]	15,000	B
7726-95-6	Bromine	10,000	a, b
7782-41-4	Fluorine	1,000	B
7782-50-5	Chlorine	2,500	a, b
7783-06-4	Hydrogen sulfide	10,000	a, b
7783-07-5	Hydrogen selenide	500	B
7783-60-0	Sulfur tetrafluoride [Sulfur fluoride (SF ₄)(SF ₄), (T-4)-]	2,500	B
7784-34-1	Arsenous trichloride	15,000	B
7784-42-1	Arsine	1,000	B
7803-51-2	Phosphine	5,000	B
8014-95-7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] ¹	10,000	E
10025-87-3	Phosphorus oxychloride [Phosphoryl chloride]	5,000	B
10049-04-4	Chlorine dioxide [Chlorine oxide (ClO ₂)(ClO ₂)]	1,000	C
10102-43-9	Nitric oxide [Nitrogen oxide (NO)]	10,000	B
10294-34-5	Boron trichloride [Borane, trichloro-]	5,000	B
13463-39-3	Nickel carbonyl	1,000	B
13463-40-6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) ₅).(TB-5-11)-] [Iron carbonyl (Fe(CO) ₅), (TB-5-11)-]	2,500	B
19287-45-7	Diborane	2,500	B
26471-62-5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] ¹	10,000	A

¹ The mixture exemption in Section 68.115(b)(1) does not apply to the substance

NOTE: Basis for Listing:

a Mandated for listing by Congress

b On EHS list, vapor pressure 10 mmHg or greater

c Toxic gas

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents

TABLE 3 to Regulation 61-62.68.130 shall be revised as follows:

TABLE 3 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 63 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Acetaldehyde	75-07-0	10,000	G
Acetylene [Ethyne]	74-86-2	10,000	F
Bromotrifluoroethylene [Ethene, bromotrifluoro-]	598-73-2	10,000	F
1,3-Butadiene	106-99-0	10,000	f
Butane	106-97-8	10,000	f
1-Butene	106-98-9	10,000	f
2-Butene	107-01-7	10,000	f
Butene	25167-67-3	10,000	f
2-Butene cis-2-Butene, cis-	590-18-1	10,000	f
2-Butene trans-2-Butene, trans- [2-Butene, (E)-]	624-64-6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463-58-1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791-21-1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557-98-2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590-21-6	10,000	g
Cyanogen [Ethanedinitrile]	460-19-5	10,000	f
Cyclopropane	75-19-4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109-96-0	10,000	f
Difluoroethane [Ethane, 1,1-difluoro-]	75-37-6	10,000	f

TABLE 3 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 63 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
Dimethylamine [Methanamine, N-methyl-] [Methanamine, N-methyl-]	124-40-3	10,000	f
2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	10,000	f
Ethane	74-84-0	10,000	f
Ethyl acetylene [1-Butyne]	107-00-6	10,000	f
Ethylamine [Ethanamine]	75-04-7	10,000	f
Ethyl chloride [Ethane, chloro-]	75-00-3	10,000	f
Ethylene [Ethene]	74-85-1	10,000	f
Ethyl ether [Ethane, 1,1'-oxybis-]	60-29-7	10,000	g
Ethyl mercaptan [Ethanethiol]	75-08-1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109-95-5	10,000	f
Hydrogen	1333-74-0	10,000	f
Isobutane [Propane, 2-methyl-]	75-28-5	10,000	f
Isopentane [Butane, 2-methyl-]	78-78-4	10,000	g
Isoprene [1,3-Butadiene, 2-methyl-]	78-79-5	10,000	g
Isopropylamine [2-Propanamine]	75-31-0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75-29-6	10,000	g
Methane	74-82-8	10,000	f
Methylamine [Methanamine]	74-89-5	10,000	f
3-Methyl-1-butene	563-45-1	10,000	f
2-Methyl-1-butene	563-46-2	10,000	g
Methyl ether [Methane, oxybis-]	115-10-6	10,000	f
Methyl formate [Formic acid, methyl ester]	107-31-3	10,000	g
2-Methylpropene [1-Propene, 2-methyl-]	115-11-7	10,000	f
1,3-Pentadiene	504-60-9	10,000	f
Pentane	109-66-0	10,000	g

TABLE 3 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [Alphabetical Order - 63 Substances]			
Chemical Name	CAS Number	Threshold Quantity (lbs)	Basis for Listing
1-Pentene	109-67-1	10,000	g
2-Pentene, (E)-	646-04-8	10,000	g
2-Pentene, (Z)-	627-20-3	10,000	g
Propadiene [1,2-Propadiene]	463-49-0	10,000	f
Propane	74-98-6	10,000	f
Propylene [1-Propene]	115-07-1	10,000	f
Propyne [1-Propyne]	74-99-7	10,000	f
Silane	7803-62-5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116-14-3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75-76-3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025-78-2	10,000	g
Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79-38-9	10,000	f
Trimethylamine [Methanamine, N,N-dimethyl-]	75-50-3	10,000	f
Vinyl acetylene [1-Buten-3-yne]	689-97-4	10,000	f
Vinyl chloride [Ethene, chloro-]	75-01-4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109-92-2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75-02-5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75-35-4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75-38-7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107-25-5	10,000	f

¹A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see [§Section](#) 68.126).

NOTE: Basis for Listing:

- a Mandated for listing by Congress
- f Flammable gas
- g Volatile flammable liquid

TABLE 4 to Regulation 61-62.68.130 shall be revised as follows:

TABLE 4 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 63 Substances]			
CAS No	Chemical name	Threshold Quantity (lbs)	Basis for listing
60-29-7	Ethyl ether [Ethane, 1,1'-oxybis- [Ethane, 1,1'-oxybis-]]	10,000	g
74-82-8	Methane	10,000	f
74-84-0	Ethane	10,000	f
74-85-1	Ethylene [Ethene]	10,000	f
74-86-2	Acetylene [Ethyne]	10,000	f
74-89-5	Methylamine [Methanamine]	10,000	f
74-98-6	Propane	10,000	f
74-99-7	Propyne [1-Propyne]	10,000	f
75-00-3	Ethyl chloride [Ethane, chloro-]	10,000	f
75-01-4	Vinyl chloride [Ethene, chloro-]	10,000	a, f
75-02-5	Vinyl fluoride [Ethene, fluoro-]	10,000	f
75-04-7	Ethylamine [Ethanamine]	10,000	f
75-07-0	Acetaldehyde	10,000	g
75-08-1	Ethyl mercaptan [Ethanethiol]	10,000	g
75-19-4	Cyclopropane	10,000	f
75-28-5	Isobutane [Propane, 2-methyl-]	10,000	f
75-29-6	Isopropyl chloride [Propane, 2-chloro-]	10,000	g
75-31-0	Isopropylamine [2-Propanamine]	10,000	g
75-35-4	Vinylidene chloride [Ethene, 1,1-dichloro-]	10,000	g
75-37-6	Difluoroethane [Ethane, 1,1-difluoro-]	10,000	f
75-38-7	Vinylidene fluoride [Ethene, 1,1-difluoro-]	10,000	f
75-50-3	Trimethylamine [Methanamine, N, N dimethyl- [Methanamine, N,N-dimethyl-]]	10,000	f
75-76-3	Tetramethylsilane [Silane, tetramethyl-]	10,000	g
78-78-4	Isopentane [Butane, 2-methyl-]	10,000	g
78-79-5	Isoprene [1,3, Butadiene, 2-methyl- [1,3-Butadiene, 2-methyl-]]	10,000	g

TABLE 4 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 63 Substances]			
CAS No	Chemical name	Threshold Quantity (lbs)	Basis for listing
79-38-9	Trifluorochloroethylene [Ethene, chlorotrifluoro-]	10,000	f
106-97-8	Butane	10,000	f
106-98-9	1-Butene	10,000	f
106-99-0	1,3-Butadiene	10,000	f
107-00-6	Ethyl acetylene [1-Butyne]	10,000	f
107-01-7	2-Butene	10,000	f
107-25-5	Vinyl methyl ether [Ethene, methoxy-]	10,000	f
107-31-3	Methyl formate [Formic acid, methyl ester]	10,000	g
109-66-0	Pentane	10,000	g
109-67-1	1-Pentene	10,000	g
109-92-2	Vinyl ethyl ether [Ethene, ethoxy-]	10,000	g
109-95-5	Ethyl nitrite [Nitrous acid, ethyl ester]	10,000	f
115-07-1	Propylene [1-Propene]	10,000	f
115-10-6	Methyl ether [Methane, oxybis-]	10,000	f
115-11-7	2-Methylpropene [1-Propene, 2-methyl-]	10,000	f
116-14-3	Tetrafluoroethylene [Ethene, tetrafluoro-]	10,000	f
124-40-3	Dimethylamine [Methanamine, N-methyl-]	10,000	f
460-19-5	Cyanogen [Ethanedinitrile]	10,000	f
463-49-0	Propadiene [1,2-Propadiene]	10,000	f
463-58-1	Carbon oxysulfide [Carbon oxide sulfide (COS)]	10,000	f
463-82-1	2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	10,000	f
504-60-9	1,3-Pentadiene	10,000	f
557-98-2	2-Chloropropylene [1-Propene, 2-chloro-]	10,000	g
563-45-1	3-Methyl-1-butene	10,000	f
563-46-2	2-Methyl-1-butene	10,000	g

TABLE 4 - LIST OF REGULATED FLAMMABLE SUBSTANCES¹ AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION [CAS Number Order - 63 Substances]			
CAS No	Chemical name	Threshold Quantity (lbs)	Basis for listing
590-18-1	2-Butene cis-2-Butene, cis-	10,000	f
590-21-6	1-Chloropropylene [1-Propene, 1-chloro-]	10,000	g
598-73-2	Bromotrifluorethylene [Ethene, bromotrifluoro-]	10,000	f
624-64-6	2-Butene trans-2-Butene, trans- [2-Butene, (E)-]	10,000	f
627-20-3	2-Pentene, (Z)-	10,000	g
646-04-8	2-Pentene, (E)-	10,000	g
689-97-4	Vinyl acetylene [1-Buten-3-yne]	10,000	f
1333-74-0	Hydrogen	10,000	f
4109-96-0	Dichlorosilane [Silane, dichloro-]	10,000	f
7791-21-1	Chlorine monoxide [Chlorine oxide]	10,000	f
7803-62-5	Silane	10,000	f
10025-78-2	Trichlorosilane [Silane, trichloro-]	10,000	g
25167-67-3	Butene	10,000	f

¹A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see §Section 68.126).

Note: Basis for Listing:

- a Mandated for listing by Congress
- f Flammable gas
- g Volatile flammable liquid

Regulation 61-62.68.220 (d) shall be revised as follows:

(d) Exemption from audits. A stationary source with a Star or Merit ranking under OSHA's voluntary protection program shall be exempt from audits under paragraph (b)(c)(2) and (b)(c)(7) of this section.

Regulation 61-62.68.220 (g) shall be revised as follows:

(g) Written response to a preliminary determination.

(1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (e)(f) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part.

For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The owner or operator shall provide written response in accordance with paragraph ~~(f)(g)~~(1) to the Department, or the agency designated by delegation or agreement, within **ninety (90)** days of issuance of the preliminary determination or a shorter period of time as the Department, or the agency designated by delegation or agreement, specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the Department, or the agency designated by delegation or agreement, may provide in writing additional time for the response to be received.

Regulation 61-62.68.220 (h) shall be revised as follows:

(h) After providing the owner or operator an opportunity to respond under paragraph ~~(f)(g)~~ of this section, the Department, or the agency designated by delegation or agreement, may issue the owner or operator a written final determination of necessary revisions to the stationary source’s RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph ~~(e)(f)~~ of this section or may adopt or modify the substitute revisions provided in the response under paragraph ~~(f)(g)~~ of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph ~~(f)(g)~~ of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

Regulation 61-62.68.220 (i) shall be revised as follows:

(i) Thirty **(30)** days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph ~~(e)(h)~~ of this section, the owner or operator shall be in violation of subpart G of this part and this section unless the owner or operator revises the RMP prepared under subpart G of this part as required by the final determination, and submits the revised RMP as required under Section 68.150.

Appendix A to part 68 (Regulation 61-62.68) shall be revised as follows:

Appendix A - Table of Toxic Endpoints [As defined in Section 68.22 of this part]		
CAS Number	Chemical Name	Toxic endpoint (mg/L)
107-02-8	Acrolein [2-Propenal]	0.0011
107-13-1	Acrylonitrile [2-Propenenitrile]	0.076
814-68-6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107-18-6	Allyl alcohol [2-Propen-1-ol]	0.036
107-11-9	Allylamine [2-Propen-1-amine]	0.0032
7664-41-7	Ammonia (anhydrous)	0.14
7664-41-7	Ammonia (conc. 20% or greater)	0.14

Appendix A - Table of Toxic Endpoints [As defined in Section 68.22 of this part]		
CAS Number	Chemical Name	Toxic endpoint (mg/L)
7784-34-1	Arsenous trichloride	0.010
7784-42-1	Arsine	0.0019
10294-34-5	Boron trichloride [Borane, trichloro-]	0.010
7637-07-2	Boron trifluoride [Borane, trifluoro-]	0.028
353-42-4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4 [Boron, trifluoro[oxybis[methane]], (T-4)-]	0.023
7726-95-6	Bromine	0.0065
75-15-0	Carbon disulfide	0.16
7782-50-5	Chlorine	0.0087
10049-04-4	Chlorine dioxide [Chlorine oxide (ClO ₂)]	0.0028
67-66-3	Chloroform [Methane, trichloro-]	0.49
542-88-1	Chloromethyl ether [Methane, oxybis[chloro-]	0.00025
107-30-2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170-30-3	Crotonaldehyde [2-Butenal]	0.029
123-73-9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506-77-4	Cyanogen chloride	0.030
108-91-8	Cyclohexylamine [Cyclohexanamine]	0.16
19287-45-7	Diborane	0.0011
75-78-5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	0.026
57-14-7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106-89-8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107-15-3	Ethylenediamine [1,2-Ethanediamine]	0.49
151-56-4	Ethyleneimine [Aziridine]	0.018
75-21-8	Ethylene oxide [Oxirane]	0.090
7782-41-4	Fluorine	0.0039
50-00-0	Formaldehyde (solution)	0.012

Appendix A - Table of Toxic Endpoints [As defined in Section 68.22 of this part]		
CAS Number	Chemical Name	Toxic endpoint (mg/L)
110-00-9	Furan	0.0012
302-01-2	Hydrazine	0.011
7647-01-0	Hydrochloric acid (conc. 37% or greater)	0.030
74-90-8	Hydrocyanic acid	0.011
7647-01-0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664-39-3	Hydrogen fluoride/Hydrofluoric acid (conc. 50% or greater) [Hydrofluoric acid]	0.016
7783-07-5	Hydrogen selenide	0.00066
7783-06-4	Hydrogen sulfide	0.042
13463-40-6	Iron, pentacarbonyl- Iron carbonyl (Fe(CO)₅), (TB-5-11)- Iron carbonyl (Fe(CO)₅), (TB-5-11)-	0.00044
78-82-0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108-23-6	Isopropyl chloroformate Carbonochloride acid, 1-methylethyl ester Carbonochloridic acid, 1-methylethyl ester	0.10
126-98-7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027
74-87-3	Methyl chloride [Methane, chloro-]	0.82
79-22-1	Methyl chloroformate Carbonochloridic acid, methylester Carbonochloridic acid, methyl ester	0.0019
60-34-4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624-83-9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74-93-1	Methyl mercaptan [Methanethiol]	0.049
556-64-9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75-79-6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463-39-3	Nickel carbonyl	0.00067
7697-37-2	Nitric acid (conc. 80% or greater)	0.026
10102-43-9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014-95-7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79-21-0	Peracetic acid [Ethaneperoxoic acid]	0.0045
594-42-3	Perchloromethylmercaptan [Methanesulphenyl chloride, trichloro-]	0.0076

Appendix A - Table of Toxic Endpoints [As defined in Section 68.22 of this part]		
CAS Number	Chemical Name	Toxic endpoint (mg/L)
75-44-5	Phosgene [Carbonic dichloride]	0.00081
7803-51-2	Phosphine	0.0035
10025-87-3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719-12-2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110-89-4	Piperidine	0.022
107-12-0	Propionitrile [Propanenitrile]	0.0037
109-61-5	Propyl chloroformate [Carbonochloridic acid, propylester] [Carbonochloridic acid, propyl ester]	0.010
75-55-8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75-56-9	Propylene oxide [Oxirane, methyl-]	0.59
7446-09-5	Sulfur dioxide (anhydrous)	0.0078
7783-60-0	Sulfur tetrafluoride [Sulfur fluoride (SF₄), (T-4)] [Sulfur fluoride (SF ₄), (T-4)-]	0.0092
7446-11-9	Sulfur trioxide	0.010
75-74-1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509-14-8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750-45-0	Titanium tetrachloride [Titanium chloride (TiCl₄)(T-4)] [Titanium chloride (TiCl ₄), (T-4)-]	0.020
584-84-9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91-08-7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471-62-5	Toluene diisocyanate (unspecified isomer) [Benzene,1,3-diisocyanatomethyl-]	0.0070
75-77-4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108-05-4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

Regulation 61-62.70, Title V Operating Permit Program

Regulation 61-62.70.3 (a)(6), shall be revised as follows:

~~(6) Any source listed in Section 70.3(a) that is exempt from the requirement to obtain a permit under Section 70.3(b) may opt to apply for a permit under this Part 70 program.~~

Regulation 61-62.96, Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program, shall be revised as follows:

61-62.96 Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program

~~The provisions of 61-62.96, Subparts AAAA through IIII, supersede the provisions of 61-62.96, “Nitrogen Oxides (NO_x) Budget Trading Program,” Subparts A through I, in accordance with the following schedule:~~

~~For control periods 2009 and beyond, the provisions of 61-62.96, Subparts A through I, are repealed effective April 30, 2009.~~

Subpart A - NO_x Budget Program General Provisions

Section 96.1 Purpose.

In accordance with 40 CFR 51.121, this regulation establishes general provisions and the applicability and monitoring provisions for the NO_x Budget Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this regulation as a matter of State and Federal law. The State of South Carolina authorizes the EPA to assist the State in implementing the NO_x Budget Program by carrying out the functions set forth for the EPA in such requirements.

Section 96.2 Definitions.

The terms used in this regulation shall have the meanings set forth in this section as follows:

(a) Account certificate of representation means the completed and signed submission required by subpart B of this regulation for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Program.

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under Subpart H of this regulation, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subpart H of this regulation.

(f) Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(g) CAA means the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).

(h) Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(i) Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(j) Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in Section 96.5, for a unit that is a NO_x Budget unit under Section 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Section 96.5, for a unit that is not a NO_x Budget unit under Section 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under Section 96.4 shall be the unit's date of commencement of commercial operation.

(k) Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in Section 96.5, for a unit that is a NO_x Budget unit under Section 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Section 96.5, for a unit that is not a NO_x Budget unit under Section 96.4 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under Section 96.4 shall be the unit's date of commencement of operation.

(l) Common stack means a single flue through which emissions from two or more units are exhausted.

(m) [Reserved]

(n) [Reserved]

(o) Continuous emission monitoring system or CEMS means the equipment required under Subpart H of 40 CFR part 75 to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR part 75, in a continuous emission monitoring system:

(1) Flow monitor;

(2) Nitrogen oxides pollutant concentration monitors;

(3) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Subpart H of this regulation;

(4) A continuous moisture monitor when such monitoring is required by Subpart H of this regulation; and

(5) An automated data acquisition and handling system.

(p) Control period means for the year 2004, the period beginning on May 31 and ending on September 30 of the same year, inclusive. Thereafter, control period shall mean the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(q) Department means the South Carolina Department of Health and Environmental Control.

(r) Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the EPA by the NO_x authorized account representative and as determined by the EPA in accordance with subpart H of this regulation.

(s) [Reserved]

(t) EPA means the United States Environmental Protection Agency.

(u) [Reserved]

(v) [Reserved]

(w) Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(x) Fossil fuel-fired means, with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty (50) percent of the annual heat input on a Btu basis during 1995, or if a unit had not heat input in 1995, during the last year of operation of the unit prior to 1995;

(2) For units that commenced operation on or after January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty (50) percent of the annual heat input on a Btu basis during any year.

(3) Notwithstanding the definition set forth in 96.2(x)(1) above, a unit shall be deemed fossil fuel-fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than fifty (50) percent of the annual heat input on a Btu basis.

(y) [Reserved]

(z) Generator means a device that produces electricity.

(aa) Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the EPA by the NO_x authorized account representative and as determined by the EPA in accordance with Subpart H of this regulation, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(bb) Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(3) For a period equal to or greater than twenty-five (25) years or seventy (70) percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(cc) [Reserved]

(dd) Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(ee) [Reserved]

(ff) [Reserved]

(gg) Maximum rated hourly heat input means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(hh) Monitoring system means any monitoring system that meets the requirements of Subpart H of this regulation.

(ii) [Reserved]

(jj) Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(kk) [Reserved]

(ll) [Reserved]

(mm) [Reserved]

(nn) [Reserved]

(oo) [Reserved]

(pp) [Reserved]

(qq) [Reserved]

(rr) NO_x authorized account representative means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with Subpart B of this regulation, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Program.

(ss) [Reserved]

(tt) [Reserved]

(uu) [Reserved]

(vv) [Reserved]

(ww) NO_x Budget source means a source that includes one or more NO_x Budget units.

(xx) NO_x Budget Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this regulation and pursuant to 40 CFR Part 51 Section 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(yy) NO_x Budget unit means a unit that is subject to the NO_x Budget Program emissions limitation under Section 96.4.

(zz) [Reserved]

(aaa) Operator means any person who operates, controls, or supervises a NO_x Budget unit or a NO_x Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(bbb) [Reserved]

(ccc) [Reserved]

(ddd) Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable Title in a NO_x Budget unit; or

(2) Any holder of a leasehold interest in a NO_x Budget unit; or

(3) Any purchaser of power from a NO_x Budget unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit; or

(4) [Reserved]

(eee) Ozone season means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(fff) [Reserved]

(ggg) Receive or receipt of means, when referring to the Department or the EPA, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the EPA in the regular course of business.

(hhh) [Reserved]

(iii) [Reserved]

(jjj) [Reserved]

(kkk) Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a source, including a source with multiple units, shall be considered a single facility.

(lll) State means the State of South Carolina.

(mmm) [Reserved]

(nnn) Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(ooo) [Reserved]

(ppp) [Reserved]

(qqq) [Reserved]

(rrr) Unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(sss) [Reserved]

(ttt) Unit operating day means a calendar day in which a unit combusts any fuel.

(uuu) Unit operating hour or hour of unit operation means any hour (or fraction of an hour) during which a unit combusts any fuel.

(vvv) [Reserved]

Section 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this regulation are defined as follows:

Btu-British thermal unit.

hr-hour.

lb-pounds.

mmBtu-million Btu.

MWe-megawatt electrical.

ton-2000 pounds.
CO₂-carbon dioxide.
NO_x -nitrogen oxides.
O₂-oxygen.

Section 96.4 Applicability.

(a) The following units shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this regulation:

(1)(i) For units that commenced operation before January 1, 1999, a unit serving a generator that has a nameplate capacity greater than 25 MWe and, except for a unit that has a SIC code of 4911 or 4931, produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.

(ii) For units that commenced operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

(2)(i) For units that commenced operation before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator that has a nameplate capacity greater than 25 MWe if any such generator produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.

(ii) For units that commenced operation on or after January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time served a generator producing electricity for sale; or

(B) At any time served a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than fifty (50) percent of the potential electrical output capacity of the unit.

(b)(1) Notwithstanding paragraph (a) of this section, a unit under paragraph (a)(1) or (a)(2) of this section that has a federally enforceable permit restricting the unit to the combustion of only natural gas or fuel oil and includes a NO_x emission limitation restricting NO_x emissions during a control period to 25 tons or less and that includes the special provisions in paragraph (b)(4) of this section shall be exempt from the requirements of the NO_x Budget Program, except for the provisions of this paragraph, Section 96.2, Section 96.3, Section 96.4(a), and Section 96.7. The NO_x emission limitation under this paragraph (b)(1) shall restrict NO_x emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under 40 CFR part 75 Section 75.19.

(2) The exemption under paragraph (b)(1) of this section shall become effective as follows:

(i) The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final; or

(ii) If the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided

that such NO_x emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_x emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (b)(1) of this section shall become effective on October 1 of the year during which such NO_x emission limitation and the special provisions become final.

(3) The Department will provide the EPA written notice of the issuance of such permit under paragraph (b)(1) of this section for a unit under paragraph (a)(1) or (a)(2) of this section, and, upon request, a copy of the permit.

(4) Special provisions.

(i) A unit exempt under paragraph (b)(1) of this section shall comply with the restriction on unit operating hours described in paragraph (b)(1) of this section during the control period in each year.

(ii) [Reserved]

(iii) A unit exempt under this paragraph (b) shall report hours of unit operation during the control period in each year to the Department by November 1 of that year.

(iv) For a period of five (5) years from the date the records are created, the owners and operators of a unit exempt under paragraph (b)(1) of this section shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (b)(1) of this section were met, including the restriction on fuel use and unit operating hours. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the EPA. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours.

(v) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under paragraph (b)(1) of this section shall comply with the requirements of the NO_x Budget Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(vi) On the earlier of the following dates, a unit exempt under paragraph (b)(1) of this section shall lose its exemption:

(A) The date on which the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(B) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section during any control period starting in 2004.

(vii) A unit that loses its exemption in accordance with paragraph (b)(4)(vi) of this section shall be subject to the requirements of this part. For the purpose of applying monitoring requirements under Subpart H of this regulation, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (a)(1) of this section, commencing commercial operation on the date the unit loses its exemption.

(viii) [Reserved]

Section 96.5 Retired unit exemption.

(a) This section applies to any NO_x Budget unit that is permanently retired.

(b)(1) Any NO_x Budget unit that is permanently retired shall be exempt from the NO_x Budget Program, except for the provisions of this section, and Sections 96.2, 96.3, 96.4, and 96.7.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative (authorized in accordance with subpart B of this regulation) shall submit a statement to the Department otherwise responsible for administering any permit for the unit. A copy of the statement shall be submitted to the EPA. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the Department will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) Special provisions.

(1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) [Reserved]

(3) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) [Reserved]

(5) For a period of five (5) years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption.

(i) [Reserved]

(ii) For the purpose of applying monitoring requirements under Subpart H of this regulation, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

Section 96.6 Standard requirements.

(a) [Reserved]

(b) Monitoring requirements.

(1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of Subpart H of this regulation.

(2) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the Department or the EPA.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Section 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with Subpart H of this regulation; provided that to the extent that Subpart H of this regulation provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Program.

(iv) Copies of all documents used to complete any submission under the NO_x Budget Program or to demonstrate compliance with the requirements of the NO_x Budget Program.

(2) The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Program, including those under subpart H of this regulation.

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the NO_x Budget Program or an exemption under Section 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO_x Budget Program that occurs prior to the date that the revision takes effect.

(4) Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Program.

(5) Any provision of the NO_x Budget Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

(6) Any provision of the NO_x Budget Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) Effect on Other Authorities. No provision of the NO_x Budget Program or an exemption under Section 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.

Section 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B - NO_x Authorized Account Representative for NO_x Budget Sources

Section 96.10 Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under Section 96.11, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Program concerning the source or any NO_x Budget unit at the source.

(b) The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

(c) Upon receipt by the EPA of a complete account certificate of representation under Section 96.13, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the Department, the EPA, or a court regarding the source or unit.

(d) [Reserved]

(e)(1) Each submission under the NO_x Budget Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The Department and the EPA will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

Section 96.11 Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the EPA of a complete account certificate of representation under Section 96.13, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this section and Sections 96.10(a), 96.12, and 96.13, whenever the term "NO_x authorized account representative" is used in this regulation, the term shall be construed to include the alternate NO_x authorized account representative.

Section 96.12 Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators.

(a) Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the EPA of a superseding complete account certificate of representation under Section 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the EPA receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(b) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the EPA of a superseding complete account certificate of representation under Section 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior

to the time and date when the EPA receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(c) Changes in the owners and operators.

(1) In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Department or the EPA, as if the new owner or operator were included in such list.

(2) Within thirty (30) days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Section 96.13 Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the EPA:

(1) Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the EPA, or a court regarding the source or unit.

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the Department or the EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the EPA. Neither the Department nor the EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

Section 96.14 Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under Section 96.13 has been submitted and received, the Department and the EPA will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under Section 96.13 is received by the EPA.

(b) Except as provided in Section 96.12(a) or (b), no objection or other communication submitted to the Department or the EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Department or the EPA under the NO_x Budget Program.

(c) Neither the Department nor the EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative.

Subpart C - [Reserved]

Subpart D - [Reserved]

Subpart E - South Carolina NO_x Ozone Season Budget

Section 96.40 State NO_x Budget.

For purposes of this regulation, for any control period, the South Carolina NO_x budgets are as follows:

(a) The NO_x budget for units specified in section 96.4(a)(1) is 16,199 tons as approved at 67 FR 43546. The sum of the tons of NO_x emitted from all such units in each control period beginning after the effective date of this rule may not exceed this budget amount.

(b) The NO_x budget for units specified in section 96.4(a)(2) is 3,479 tons as approved at 67 FR 43546. The sum of the tons of NO_x emitted from all such units in each control period beginning after the effective date of this rule may not exceed this budget amount.

Subpart F - [Reserved]

Subpart G - [Reserved]

Subpart H - Monitoring and Reporting

Section 96.70 General Requirements.

The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall implement a monitoring system necessary to attribute ozone season NO_x mass emissions to each unit in accordance with 40 CFR Part 75, Subpart H, or as otherwise allowed under 40 CFR 51.121 and the federally enforceable permit applicable to the unit. NO_x mass emissions measurements recorded and reported in accordance with 40 CFR Part 75, Subpart H, or 40 CFR 51.121 and the federally enforceable permit, as applicable, shall be used to determine compliance with the NO_x budgets set forth in section 96.40 of this regulation. For purposes of a source subject to the monitoring and reporting provisions of subpart H of 40 CFR part 75, the definitions in Section 96.2 and in 40 CFR part 72 section 72.2 shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system

(or CEMS) in 40 CFR part 75 shall be replaced by the terms NO_x Budget unit, NO_x authorized account representative, and continuous emission monitoring system (or CEMS), respectively, as defined in Section 96.2.

Section 96.76 [Reserved]

Subpart I - [Reserved]

CAIR NO_x ANNUAL TRADING PROGRAM

Subpart AA – “South Carolina CAIR NO_x Annual Trading Program General Provisions”

The provisions of 40 Code of Federal Regulations (CFR) Part 96 Subpart AA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart AA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]
Revision	Vol. 72	October 19, 2007	[72 FR 59190]

Subpart BB – “CAIR Designated Representative for CAIR NO_x Sources”

The provisions of 40 CFR Part 96 Subpart BB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart BB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CC – “Permits”

The provisions of 40 CFR Part 96 Subpart CC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart CC			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart DD – [Reserved]

Subpart EE – “CAIR NO_x Allowance Allocations”

Section 96.140 South Carolina Trading Budget.

The South Carolina trading budget for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 is 32,662 tons, and in 2015 and thereafter is 27,219 tons.

Section 96.141 Timing Requirements for CAIR NO_x Allowance Allocations.

(a) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.142(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(b) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with Sections 96.142(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(c) By October 31, 2009, and October 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations for new units from the new unit set aside account, in a format prescribed by the Administrator and in accordance with Section 96.142(a), (c), and (d) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.142 CAIR NO_x Allowance Allocations.

(a) (1) The baseline heat input (in million metric British thermal units (mmBtu)) used with respect to CAIR NO_x allowance allocations for each CAIR NO_x unit will be:

(i) The allowances allocated for the years 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x annual allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x allowance allocation under Section 96.141(b), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control periods for which the CAIR NO_x annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

~~—(2) A unit's control period heat input, and a unit's status as coal fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (e)(3) of this section, will be determined in accordance with 40 CFR 75, to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.~~

~~(b) —(1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal 97 percent for a control of the tons of NO_x emissions in the State trading budget under Section 96.140 (except as provided in paragraph (d) of this section).~~

~~—(2) The Department will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.~~

~~(c) **New Unit Set aside:** For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x allowances to CAIR NO_x units in the State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:~~

~~—(1) The Department will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated CAIR NO_x allowances equal three percent for a control period of the amount of tons of NO_x emissions in the State trading budget under Section 96.140.~~

~~—(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period.~~

~~—(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period in accordance with Subpart HH of this regulation.~~

~~—(4) The Department will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:~~

~~—(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.~~

(ii) On or after May 1 of the control period, the Department will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set aside for the control period, the Department will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided 97 percent for a control period the amount of tons of NO_x emissions in the State trading budget under Section 96.140, and rounded to the nearest whole allowance as appropriate.

Section 96.143 Compliance Supplement Pool.

(a) In addition to the CAIR NO_x allowances allocated under Section 96.142, the Department may allocate for the control period in 2009 up to 2,600 tons of CAIR NO_x allowances to CAIR NO_x units in the State. These allowances are referred to as the Compliance Supplement Pool.

(b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

—(1) The owners and operators of such CAIR NO_x units shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with Part 96 subpart HH of this regulation in each control period for which early reduction credit is requested.

—(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with Part 96 Subpart HH of this regulation.

(c) For any CAIR NO_x unit in the State whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

———— (1) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

———— (2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

———— (i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

———— (ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The Department will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009, and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

———— (1) Upon receipt of each such request, the Department will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

———— (2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

———— (3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

$$\text{Unit's allocation} = \text{Unit's adjusted allocation} \times \left(\frac{\text{State's compliance supplement pool}}{\text{Total adjusted allocations for all units}} \right)$$

Where:

“Unit's allocation” is the amount of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

——— (4) By November 30, 2009, the Department will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

——— (5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF – “CAIR NO_x Allowance Tracking System”

——— The provisions of 40 CFR Part 96 Subpart FF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

The following State modifications are being made in R. 61-62.96.153 to section 96.153 of 70 FR 25161:

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(a), for the control periods in 2009, 2010, 2011, and 2012.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(b), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2013, and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(b), for the control period in the fourth, fifth, sixth, and seventh years after the year of the applicable deadline for recordation under this paragraph.

Subpart GG – “CAIR NO_x Allowance Transfers”

——— The provisions of 40 CFR Part 96 Subpart GG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GG			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HH – “Monitoring and Reporting”

The provisions of 40 CFR Part 96 Subpart HH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart HH			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart II – “CAIR NO_x Opt-in Units”

The provisions of 40 CFR Part 96 Subpart II, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart II			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR SO₂ TRADING PROGRAM

Subpart AAA – “CAIR SO₂ Trading Program General Provisions”

The provisions of 40 CFR Part 96 Subpart AAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart AAA			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]
Revision	Vol. 72	October 19, 2007	[72 FR 59190]

Subpart BBB – “CAIR Designated Representative for CAIR SO₂ Sources”

The provisions of 40 CFR Part 96 Subpart BBB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart BBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CCC – “Permits”

The provisions of 40 CFR Part 96 Subpart CCC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart CCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDD [Reserved]

Subpart EEE [Reserved]

Subpart FFF – “CAIR SO₂ Allowance Tracking System”

The provisions of 40 CFR Part 96 Subpart FFF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GGG – “CAIR SO₂ Allowance Transfers”

The provisions of 40 CFR Part 96 Subpart GGG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHH – “Monitoring and Reporting”

The provisions of 40 CFR Part 96 Subpart HHH, as originally published in the Federal Register

and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein:

40 CFR Part 96 Subpart HHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart III—“CAIR SO₂-Opt-in Units”

— The provisions of 40 CFR Part 96 Subpart III, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein:

40 CFR Part 96 Subpart III			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR NO_x-OZONE SEASON TRADING PROGRAM

Subpart AAAA—“CAIR NO_x-Ozone Season Trading Program General Provisions”

— The provisions of 40 CFR Part 96 Subpart AAAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein:

40 CFR Part 96 Subpart AAAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]
Revision	Vol. 72	October 19, 2007	[72 FR 59190]

The following State modifications to definitions are being made in R. 61-62.96.302 to section 96.302 of 70 FR 25161:

“Commence commercial operation”—(a) For all units “commence commercial operation” means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in Section 96.305 and Section 96.384(h).

(i) For a unit that is a CAIR NO_x-Ozone Season unit under Section 96.304 on the later of

November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_x-Ozone Season unit under Section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (for example, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in Section 96.305, for a unit that is not a CAIR NO_x-Ozone Season unit under Section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x-Ozone Season unit under Section 96.304.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

“Electric Generating Unit” or “EGU”—any unit subject to this regulation as specified in Section 96.304 (a)(1)(i), (a)(2), and (b).

“Non Electric Generating Unit” or “Non EGU”—any unit subject to this regulation as specified in Section 96.304 (a)(1)(ii).

The following definitions are revised in Section 96.302 Definitions:

“Commence operation”—(a) For all units “commence operation” means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start up of a unit's combustion chamber, except as provided in Section 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (for example, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in Section 96.384(h).

(b) Notwithstanding paragraph (a) of this definition and solely for purposes of 40 CFR 96, Subpart HHHH, for a unit that is not a CAIR NO_x-Ozone Season unit under Section 96.304(a)(1)(ii) on the later of November 15, 1990, or the date the unit commences operation as defined in paragraph (a)(1), (2), or (3) of this definition and that subsequently becomes such a CAIR NO_x-Ozone Season unit, the unit's date of commencement of operation shall be the date on which the unit becomes a CAIR NO_x-Ozone Season unit

under Section 96.304(a)(1)(ii).

(1) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(2) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (for example, repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

"Fossil fuel fired"—(a) For a unit subject to 96.304 (a)(1)(i), (a)(2) or (b), "fossil fuel fired" means with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit subject to 96.304 (a)(1)(ii) it means with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

The following modifications are being made in R.61-62.96.302 to section 96.302 of 70 FR 25162:

(2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that during such year, the unit shall be "fossil fuel fired" as of the date upon which the unit begins combusting fossil fuel.

(3) Notwithstanding the definition set forth in (b)(1) above, a unit shall be deemed fossil fuel fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.

"Unit"—(a) For a unit subject to Section 96.304 (a)(1)(i), (a)(2), or (b), "unit" means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil fuel fired combustion device.

(b) For a unit subject to Section 96.304 (a)(1)(ii), "unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Section 96.304 Applicability.

The following State modifications are being made in R. 61-62.96.304 to section 96.304 of 70 FR 25161:

(a) Except as provided in paragraph (b) of this section,

(1) The following units in the State shall be CAIR NO_x-Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x-Ozone Season source, subject to the requirements of this subpart and Subparts BBBB through HHHH of this part:

~~(i) **EGU Applicability:** Any stationary, fossil fuel fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MWe) producing electricity for sale.~~

~~(ii) **Non-EGU Applicability:**~~

~~(A) Any unit that is not a unit under paragraph (a)(1)(i) of this section and at any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or~~

~~(B) Any unit that is not a unit under paragraph (a)(1)(i) of this section and that has a maximum design heat input greater than 250 mmBTU/hr.~~

~~(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1)(i) of this section, is not a CAIR NO_x-Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x-Ozone Season unit as provided in paragraph (a)(1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.~~

~~(b) This section applies only to units that are subject to Section 96.304(a)(1)(i) or (a)(2). The units in a state that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x-Ozone Season units:~~

~~(1) (i) Any unit that is a CAIR NO_x-Ozone Season unit under paragraph (a)(1)(i) or (2) of this section:~~

~~(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and~~

~~(B) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.~~

~~(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x-Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.~~

~~(2) (i) Any unit that is a CAIR NO_x-Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation before January 1, 1985:~~

~~(A) Qualifying as a solid waste incineration unit; and~~

~~(B) With an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).~~

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation on or after January 1, 1985;

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis);

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Subpart BBBB – “CAIR Designated Representative for CAIR NO_x Ozone Season Sources”

The provisions of 40 CFR Part 96 Subpart BBBB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart BBBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart CCCC – “Permits”

The provisions of 40 CFR Part 96 Subpart CCCC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart CCCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDDD [Reserved]

Subpart EEEE – “CAIR NO_x Ozone Season Allowance Allocations”

Section 96.340 South Carolina trading budget.

(a) For NO_x budget units defined as EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 is 15,249 tons and in 2015 and thereafter is 12,707 tons. —

(b) For NO_x budget units defined as non-EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for 2009 and thereafter is 3,479 tons.

Section 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations:

(a) For NO_x Budget units defined as EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.342(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.342(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations for the new unit set aside, in a format prescribed by the Administrator and in accordance with Section 96.342(c) for the control period in the year of the applicable deadline for submission under this paragraph.

(b) For NO_x Budget units defined as non-EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) (i) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator, for the control periods in 2009, 2010, 2011 and 2012.

(ii) The CAIR NO_x Ozone Season allowance allocations for 2009, 2010, and 2011 will be determined in accordance with Section 96.342(e).

(iii) The CAIR NO_x Ozone Season allowance allocations for 2012 will be determined in accordance with Section 96.342(e).

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Sections 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season new unit set aside allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.342(g) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.342 CAIR NO_x Ozone Season Allowance Allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for EGUs for each CAIR NO_x Ozone Season unit under Section 96.341(a) will be:

(i) The allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x Ozone Season allowance allocation is being

calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x-Ozone Season allowance allocation under Section 96.341(a)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control period for which the CAIR NO_x-Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR 75, to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x-Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x-Ozone Season allowances equal to 97 percent of the tons of NO_x emissions in the State EGU trading budget for a control period under Section 96.340 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x-Ozone Season allowances to each CAIR NO_x-Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x-Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x-Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x-Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(3) CAIR NO_x allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO_x SIP Call Trading Program that this Regulation replaced on April 30, 2009.

(c) **EGU New Unit Set-aside** – For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x-Ozone Season allowances to CAIR NO_x-Ozone Season units in the State that are not allocated CAIR NO_x-Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x-Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under Section 96.340(a).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the latter of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with Subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under Section 96.340, and rounded to the nearest whole allowance as appropriate.

(e) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for non-EGUs for each CAIR NO_x Ozone Season unit under Section 96.341(b) will be:

(1) For a CAIR NO_x Ozone Season allowance allocation under Section 96.341(b)(1), the allowances will be determined as follows:

(i) For the control period for the years 2009, 2010 and 2011, the allocations will be determined using the unit's baseline heat input equal to the average of the two highest amounts of the unit's heat input for the control period in the years 1999, 2000, 2001, 2002, and 2003, or, if a unit only operated during one of these control periods, the heat input during the single year of operation.

(ii) For the control period for 2012, the allocations will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years in 2004 and 2005.

(2) For a CAIR NO_x Ozone Season allowance allocation under Section 96.341(b)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control periods for which the CAIR NO_x Ozone Season allowance allocation is being calculated.

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR 75 to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.

(f) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (e) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent for a control period of the tons of NO_x emissions in the State Non-EGU trading budget under Section 96.340(b).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (f)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (f)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(g) **Non-EGU New Unit Set aside** For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do

not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (h) of this section. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with Subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (g)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (g)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is greater than or equal to the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is less than the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period, divided by the sum determined under paragraph (g)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an

allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(h) If, after completion of the procedures under paragraph (g)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (f) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (f) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State Non EGU trading budget under Section 96.340(b), and rounded to the nearest whole allowance as appropriate.

Subpart FFFF – “CAIR NO_x Ozone Season Allowance Tracking System”

The provisions of 40 CFR Part 96 Subpart FFFF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FFFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Section 96.353(e) is modified to read:

The following State modifications are being made in R. 61-62.96.353 to section 96.353 of 70 FR 25161:

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(a)(1) and (b)(1), for the control periods in 2009, 2010, 2011, and 2012.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(a)(2) and (b)(2), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2010 and December 1 of each fourth year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

(d) By September 1, 2009, and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Sections 96.341(a)(3) and (b)(3), for the control period in the year of the applicable deadline for recordation under this paragraph.

Subpart GGGG – “CAIR NO_x Ozone Season Allowance Transfers”

The provisions of 40 CFR Part 96 Subpart GGGG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GGGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHHH – “Monitoring and Reporting”

The provisions of 40 CFR Part 96 Subpart HHHH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart III – “CAIR NO_x Ozone Season Opt-in Units”

The provisions of 40 CFR Part 96 Subpart III, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart III			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subparts AA through II, AAA through III, and AAAA through IIII – [Repealed]

ATTACHMENT B

DRAFTING NOTICES 27

STATE FISCAL ACCOUNTABILITY AUTHORITY
CHAPTER 19
Statutory Authority: 1976 Code Sections 11-35-10 et seq.

Notice of Drafting:

The State Fiscal Accountability Authority proposes to amend Regulation 19-445. Interested persons may submit comments to Office of General Counsel, Attn: Keith McCook, 1201 Main Street, Suite 420, Columbia, S.C. 29201 or to regulations@ogc.sc.gov.

Synopsis:

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). The proposed regulation will address various matters regarding Regulation 19-445 and procurement in general.

Legislative review of this proposal will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control ("Department") is proposing to amend Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan ("State Implementation Plan" or "SIP"). Interested persons may submit comment(s) on these proposed amendments to Roger Jerry, Air Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, S.C. 29201, or via email at jerryre@dhec.sc.gov. To be considered, the Department must receive comments by 5:00 p.m. on October 29, 2018, the close of the drafting comment period. This notice supersedes the Notice of Drafting published in the March 23, 2018, South Carolina State Register (Volume 42, Issue 3).

Synopsis:

The United States Environmental Protection Agency (EPA) has been promulgating amendments to the Code of Federal Regulations throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include technical amendments regarding New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAP), and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

The Department proposes amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; R.61-62.61, National Emission Standards for Hazardous Air Pollutants, and R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference recent federal amendments promulgated from January 1, 2017, through December 31, 2017. The Department also proposes changes to R. 61-62.68, Chemical Accident Prevention Provisions, to maintain compliance with federal law and make corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary. Additionally, the Department proposes striking paragraph (a)(6) of Section 70.3, Applicability, in R.61-62.70, Title V Operating Permit Program, to maintain state compliance with federal regulations.

28 DRAFTING NOTICES

The Department also proposes amending R.61-62.96 to repeal the Clean Air Interstate Rule (CAIR) trading program regulations (Subparts AA through II, AAA through III, and AAAA through IIII) and reinstate applicable portions of the EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NO_x SIP Call), with amendments as necessary, to maintain state compliance with federal regulations. The Department adopted R.61-62.97, the Cross-State Air Pollution Rule (CSAPR) Trading Program, on August 25, 2017. Subparts AA through II, AAA through III, and AAAA through IIII of R.61-62.96 are based on the federal CAIR regulation, which EPA has since replaced with federal CSAPR requirements implemented by R.61-62.97. As a result, federal CAIR requirements implemented by R.61-62.96 are no longer in effect. The proposed NO_x SIP Call regulations will maintain state compliance with federal NO_x SIP Call requirements that remain applicable following the sunset and repeal of CAIR.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, as deemed necessary to maintain compliance with federal law. These changes may include, but are not limited to, corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement of the text of Regulation 61-62 as necessary.

In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law.

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
CHAPTER 65
Statutory Authority: 1976 Code Sections 1-13-70 and 1-13-80

Notice of Drafting:

The South Carolina Human Affairs Commission proposes to amend Regulation 65-30, Guidelines Established. Interested persons may submit their comments in writing to Lee Ann W. Rice, Staff Counsel, 1026 Sumter Street, Suite 101, Columbia, SC 29201.

Synopsis:

Regulation 65-30, Guidelines Established, should be updated due to new requirements of the Pregnancy Accommodations Act.

Legislative review is required.

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
CHAPTER 65
Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

Notice of Drafting:

The South Carolina Human Affairs Commission proposes to amend Regulation 65-235, Hearing Procedures (Review and Enforcement). Interested persons may submit their comments in writing to Lee Ann W. Rice, Staff Counsel, 1026 Sumter Street, Suite 101, Columbia, SC 29201.

Synopsis:

Regulation 65-235, Hearing Procedures (Review and Enforcement), should be renumbered to avoid citation errors. Additionally, the place for a hearing should ordinarily be at the Commission, rather than in the vicinity

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

November 8, 2018

(X) ACTION/DECISION

() INFORMATION

I. TITLE: Request for a nine month extension by the Board of Certificate of Need (CON) SC-15-26 issued to Medical University Hospital Authority d/b/a Medical University of South Carolina (MUSC) for renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, the purchase of a Siemens Artis Q Biplane, and the renovation of the existing inpatient pharmacy.

II. SUBJECT: MUSC requests Board approval for extension of CON SC-15-26.

III. FACTS: CON SC-15-26 was issued to MUSC on June 30, 2015 for the referenced project. The original CON had an expiration date of June 30, 2016. MUSC requested a first staff extension of the CON on May 19, 2016, which was more than 30 days prior to expiration. MUSC received CON SC-15-26-EXT-1 on June 8, 2016, which extended the expiration date of the CON until March 30, 2017. MUSC requested a second staff extension of the CON on February 6, 2017, which was more than 30 days prior to expiration. MUSC received CON SC-15-26-EXT-2 on March 6, 2017, which extended the expiration date of the CON until January 1, 2018. MUSC requested a third (Board) extension of the CON on August 4, 2017, which was more than 90 days prior to expiration. MUSC received CON SC-15-26-EXT-3 on January 8, 2018, which extended the expiration date of the CON until October 1, 2018. In accordance with R. 61-15, Section 601, MUSC submitted a fourth extension request to the Department on June 29, 2018, which is more than 90 days prior to expiration.

IV. ANALYSIS: Department staff have reviewed all relevant information concerning this fourth extension request and find that construction timelines beyond the control of MUSC have contributed to the need for further extension of CON SC-15-26. While parts of the project have been implemented in accordance with the CON, there are several approved beds which cannot be implemented until such time as MUSC's new children's hospital and women's pavilion is complete and licensed. Staff expect that additional extensions by the Board will be necessary until such time as that larger project is complete in late 2019.

V. RECOMMENDATION: Department staff recommend the Board finds that MUSC has demonstrated substantial progress on this project and approve this extension request.

Approved by:



Shelly Bezanson Kelly
Director of Health Regulation

Attachments:

- A) CON SC-15-26
- B) Letter granting first extension of CON
- C) Letter granting second extension of CON
- D) Letter granting third extension of CON
- E) Letter requesting fourth extension of CON

South Carolina Department of Health and Environmental Control



Certificate of Need

SC-15-26

IS HEREBY ISSUED TO FACILITY: MUSC Ashley River Tower, MUSC Children's Hospital and Women's Pavilion, MUSC University Hospital

FACILITY LOCATION: Charleston, South Carolina
Charleston County

LICENSEE: Medical University Hospital Authority d/b/a Medical University of South Carolina Children's Hospital and Women's Pavilion and Medical University of South Carolina Ashley River Tower

AGENT: Thomas L. Stephenson, Esq., Chairman, Children's Hospital and Women's Pavilion

FOR: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.

TOTAL PROJECT COST: \$9,178,112.

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

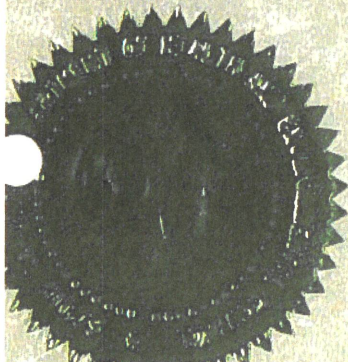
In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until June 30, 2016 which is a period of twelve (12) months from the date of issuance unless the applicant receives an extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 30th day of June, 2015.

A handwritten signature in blue ink, reading "Robert B. Phillips, Esq.", is written over a horizontal dashed line.

Robert B. (Sam) Phillips, Esq.
Director, Certificate of Need Program
Bureau of Health Facilities and Services Development





Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

June 8, 2016

VIA EMAIL AND CERTIFIED MAIL

Sarah Bacik, MHA
Chief Strategy and Business Development Officer
MUSC Health
261 Calhoun Street, Suite 100
Cannon Park Place, MSC 566
Charleston, SC 29425-3320

Article #: 92148969009997901405002030

Re: Request for an Extension of Certificate of Need No. SC-15-26

Project: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.
Charleston, South Carolina

Dear Ms. Bacik:

The South Carolina Department of Health and Environmental Control ("Department") has reviewed your request for an extension of the above referenced Certificate of Need ("Certificate" or "CON"). A Certificate is valid for one year from the date of issuance. SC Code § 44-7-230(D). If a project is not completed before the expiration of that year, or if progress on the project does not comply with the timetable set forth in the CON application, then the Department may revoke the Certificate. The holder of a CON may apply to the Department for an extension of the Certificate's expiration period pursuant to S.C. Code Regs. 61-15 sections 601 through 603. Initially, Department staff may grant up to two extensions of as long as nine months apiece upon a proper showing that substantial progress has been made in implementing the project. Subsequent extensions may only be granted by the Department's Board. SC Code § 44-7-230(D).

Based on the material you provided in support of your request, it is the decision of the Department to **grant you a nine (9) month initial extension** for Certificate No. SC-15-26. The Department's decision is based on the following findings:

- You have demonstrated that circumstances beyond the control of the applicant have prevented compliance with the Project's approved timetable, and
- You have provided the Department with reasonable assurance that the Project will be under construction or implemented within the requested extension period.

A copy of the Department's Guide to Board Review is enclosed for your convenience. Should you require further information, please contact me at (803) 545-3652.

Letter to Sarah Bacik
June 8, 2016
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read 'Louis Eubank', with a long horizontal flourish extending to the right.

Louis Eubank
Director, Certificate of Need Program

Enclosures: Guide to Board Review.
CON SC-15-26-EXT-1

Cc: Caroline Cotter (email)

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
 - South Carolina Board of Health and Environmental Control
 - Attention: Clerk of the Board
 - 2600 Bull Street
 - Columbia, South Carolina 29201Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

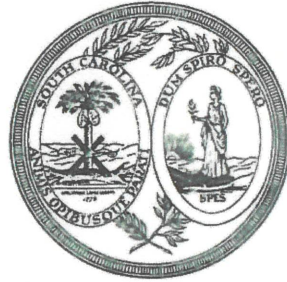
III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Department of Health and Environmental Control



Certificate of Need

SC-15-26-EXT-1

IS HEREBY ISSUED TO FACILITY: MUSC Ashley River Tower, MUSC Children's Hospital and Women's Pavilion, MUSC University Hospital

FACILITY LOCATION: Charleston, South Carolina
Charleston County

LICENSEE: Medical University Hospital Authority d/b/a Medical University of South Carolina Children's Hospital and Women's Pavilion and Medical University of South Carolina Ashley River Tower

AGENT: Thomas L. Stephenson, Esq., Chairman, Children's Hospital and Women's Pavilion

FOR: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy. .

TOTAL PROJECT COST: \$9,178,112.

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until March 30, 2017 which is a period of nine (9) months from the date of issuance unless the applicant receives an additional extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 8th day of June, 2016.



A handwritten signature in blue ink, appearing to read "Louis Eubank".

Louis Eubank
Director, Certificate of Need Program
Bureau of Health Facilities and Services Development





March 6, 2017

VIA EMAIL AND CERTIFIED MAIL

Sarah Bacik, MHA
Chief Strategy and Business Development Officer
MUSC Health
261 Calhoun Street, Suite 100
Cannon Park Place, MSC 566
Charleston, SC 29425-3320

Re: Request for an Extension of Certificate of Need No. SC-15-26

Project: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.
Charleston, South Carolina

Dear Ms. Bacik:

The South Carolina Department of Health and Environmental Control ("Department") has reviewed your request for an extension of the above referenced Certificate of Need ("Certificate" or "CON"). A Certificate is valid for one year from the date of issuance. SC Code § 44-7-230(D). If a project is not completed before the expiration of that year, or if progress on the project does not comply with the timetable set forth in the CON application, then the Department may revoke the Certificate. The holder of a CON may apply to the Department for an extension of the Certificate's expiration period pursuant to S.C. Code Regs. 61-15 sections 601 through 603. Initially, Department staff may grant up to two extensions of as long as nine months apiece upon a proper showing that substantial progress has been made in implementing the project. Subsequent extensions may only be granted by the Department's Board. SC Code § 44-7-230(D).

Based on the material you provided in support of your request, it is the decision of the Department to **grant you a second nine (9) month extension** for Certificate No. SC-15-26. The Department's decision is based on the following findings:

- You have demonstrated that circumstances beyond the control of the applicant have prevented compliance with the Project's approved timetable, and
- You have provided the Department with reasonable assurance that the Project will be under construction or implemented within the requested extension period.

A copy of the Department's Guide to Board Review is enclosed for your convenience. Should you require further information, please contact me at (803) 545-3652.

Sincerely,



Louis Eubank
Director, Certificate of Need Program

Enclosures: Guide to Board Review
CON SC-15-26-EXT-2

Cc: Caroline Cotter (email)

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
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South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
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7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

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2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Department of Health
and Environmental Control



Certificate of Need

SC-15-26-EXT-2

IS HEREBY ISSUED TO FACILITY: MUSC Ashley River Tower, MUSC Children's Hospital and Women's Pavilion, MUSC University Hospital

FACILITY LOCATION: Charleston, South Carolina
Charleston County

LICENSEE: Medical University Hospital Authority d/b/a Medical University of South Carolina Children's Hospital and Women's Pavilion and Medical University of South Carolina Ashley River Tower

AGENT: Thomas L. Stephenson, Esq., Chairman, Children's Hospital and Women's Pavilion

FOR: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.

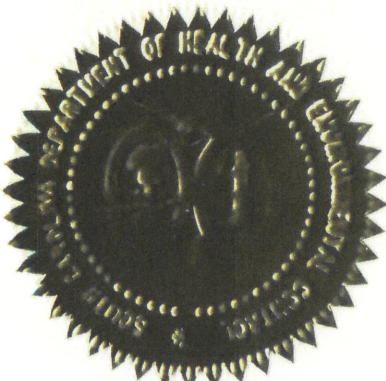
TOTAL PROJECT COST: \$9,178,112.

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until January 1, 2018 which is a period of nine (9) months from the date of prior extension expiration unless the applicant receives an additional extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 6th day of March, 2017.



A handwritten signature in blue ink, appearing to read "Louis Eubank", is written over a horizontal dashed line.

Louis Eubank
Director, Certificate of Need Program





January 8, 2018

VIA EMAIL AND CERTIFIED MAIL

Sarah Bacik, MHA
Chief Strategy and Business Development Officer
MUSC Health
261 Calhoun Street, Suite 100
Cannon Park Place, MSC 566
Charleston, SC 29425-3320

Re: Request for an Extension of Certificate of Need No. SC-15-26

Project: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.
Charleston, South Carolina

Dear Ms. Bacik:

The South Carolina Department of Health and Environmental Control ("Department") has reviewed your request for an extension of the above referenced Certificate of Need ("Certificate" or "CON"). A Certificate is valid for one year from the date of issuance. SC Code § 44-7-230(D). If a project is not completed before the expiration of that year, or if progress on the project does not comply with the timetable set forth in the CON application, then the Department may revoke the Certificate. The holder of a CON may apply to the Department for an extension of the Certificate's expiration period pursuant to S.C. Code Regs. 61-15 sections 601 through 603. Initially, Department staff may grant up to two extensions of as long as nine months apiece upon a proper showing that substantial progress has been made in implementing the project. Subsequent extensions may only be granted by the Department's Board. SC Code § 44-7-230(D).

Based on the material you provided in support of your request, it is the decision of the Department to **grant you a third nine (9) month extension** for Certificate No. SC-15-26. The Department's decision is based on the following findings:

- You have demonstrated that circumstances beyond the control of the applicant have prevented compliance with the Project's approved timetable, and
- You have provided the Department with reasonable assurance that the Project will be under construction or implemented within the requested extension period.

Please note that all subsequent requests for extension of SC-15-26 are subject to approval by the Department Board. Requests for such extension must be received 90-days prior to expiration of the current extension.

A copy of the Department's Guide to Board Review is enclosed for your convenience. Should you require further information, please contact me at (803) 545-3652.

Sincerely,

A handwritten signature in blue ink, appearing to read "Louis Eubank", with a long horizontal flourish extending to the right.

Louis Eubank, Chief
Bureau of Healthcare Planning & Construction

Enclosures: CON SC-15-26-EXT-3

Cc: Caroline Cotter (email)

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Department of Health and Environmental Control



Certificate of Need

SC-15-26-EXT-3

IS HEREBY ISSUED TO FACILITY: MUSC Ashley River Tower, MUSC Children's Hospital and Women's Pavilion, MUSC University Hospital

FACILITY LOCATION: Charleston, South Carolina
Charleston County

LICENSEE: Medical University Hospital Authority d/b/a Medical University of South Carolina Children's Hospital and Women's Pavilion and Medical University of South Carolina Ashley River Tower

AGENT: Thomas L. Stephenson, Esq., Chairman, Children's Hospital and Women's Pavilion

FOR: Renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, purchase of a Siemens Artis Q Biplane; and renovation of the existing inpatient pharmacy.

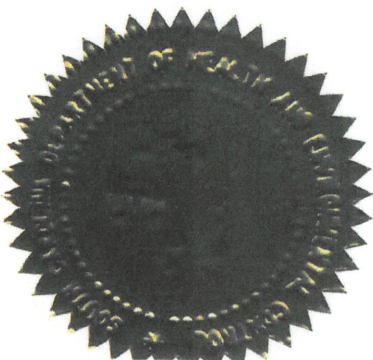
TOTAL PROJECT COST: \$9,178,112.

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until October 1, 2018 which is a period of nine (9) months from the date of prior extension expiration unless the applicant receives an additional extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 8th day of January, 2018.



A handwritten signature in black ink, appearing to read "Louis Eubank".

Louis Eubank, Chief
Bureau of Healthcare Planning &
Construction



Sarah Bacik, MHA
Chief Strategy and Business Development Officer
Medical University of South Carolina

261 Calhoun Street, Suite 100
Cannon Park Place, MSC 566
Charleston, SC 29425-3320
Tel 843 792 9917
www.muschealth.com

SCDHEC
Received
JUN 29 2018
Certificate of Need Program

June 29, 2018

Louis Eubank, Chief
Bureau of Healthcare Planning and Construction
S.C. Dept. of Health & Environmental Control

RE: MUHA's 52-Bed Expansion Certificate of Need Extension Request 4 (SC-15-26)

Dear Mr. Eubank,

This letter, on behalf of MUHA, is to provide the fourth extension request on MUHA's 52-Bed Expansion CON (SC-15-26) in accordance with State "Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15 "Certification of Need for Health Facilities and Services."

CON SC-15-26 was issued to MUHA on June 30, 2015. MUHA requested the first staff extension of the CON on May 29, 2016, which was more than 30 days prior to expiration. MUHA received CON SC-15-26-EXT-1 on June 8, 2016 and it was valid until March 30, 2017, a period of nine months from original expiration of the CON. MUHA requested a second staff extension of the CON on February 6, 2017, which was more than 30 days prior to expiration. MUHA received Con SC-15-26-EXT-2 on March 6, 2017. MUHA submitted a third extension request on August 4, 2017. CON SC-15-26-EXT-3 was issued on January 8, 2018. MUHA is requesting a fourth extension on June 29, 2018, which is 90 days prior to expiration on October 1, 2018.

Two existing components of this project have not been implemented due to construction timelines beyond the control of MUHA, and therefore require a CON extension. The implementation in accordance to CON of the 15-Bed expansion in the Shawn Jenkins Children's Hospital (SJCH), ART 4-Bed expansion and pharmacy renovation was demonstrated by a valid construction contract in the previous quarterly reports. The ART 4-bed expansion and pharmacy renovation is operational.

First, the thirty-three adult medical surgical bed expansion will be constructed in the backfill space of the existing MUSC Children's Hospital, when it is will be relocated to the SJCH on Courtney Drive. MUHA's master facility planning steering committee conducted a feasibility study to determine the appropriate location of the incremental thirty-three adult inpatient beds within the backfill space. The 2018 SC State Health Plan has determined MUHA's adult inpatient bed need to be 157 additional beds over the next seven years. The addition of these thirty-three beds will fulfill 22% of this identified need. Additional updates on this project will be provided in future quarterly reports. There have been no changes since the submission of the CON to the configuration, costs, services or scope of the project. The beds will be backfilled in a phased approach, which will begin when SJCH opens in October 2019. The estimated completion of the project is December 2019, which allows for the minor updates required to convert a pediatric inpatient unit to an adult inpatient unit.

Second, the renovation for a Biplane Procedure Room was initially planned for the third floor of the University Hospital, adjacent to the Radiology suite. This location was not ideal due to the disruption of patient services on a busy floor. In 2016, when the team determined the third floor would not be ideal, we evaluated the fifth floor of the Children's hospital, which would become available when SJCH opened. Over the last year, MUHA has been exploring a partnership that will expand capabilities and improve care. In addition, the new treatment guidelines came out which will increase MUHA's neuro-endovascular patients currently in house by 30%. The new guidelines require MUHA to have a suite available at all times. This puts the utilization of our other suite at greater than 90%. The growth we are experiencing in stroke will result in insufficient infrastructure to accommodate patient care. This delay of care will impact the quality of patient outcomes. This forced the team to re-evaluate the plan for the interventional equipment to identify a near-term solution for current neurovascular patients. The preferred option is to re-purpose an oversized waiting room on the 5th floor of the Children's Hospital. This option will allow MUHA to renovate and begin operations prior to SJCH opening and will not disrupt current operations. In addition, locating the bi-plane in the current Children's Hospital will increase patient accessibility to the equipment. The project configuration, costs, services and scope have remained unchanged. The project will be funded by MUHA and construction drawings will be included in the quarterly reports. After renovation plans begin, we will be able to operationalize the equipment in ten months, which was the timeline included in the CON.

At this time, there have been no additional changes to the project and we request approval from the DHEC Board for a fourth extension of SC-15-26. Please contact me at (843) 843-792-9917 if you have any questions regarding this information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Bacik', written in a cursive style.

Sarah Bacik, MHA
Chief Strategy and Business Development Officer
The Medical University of South Carolina

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

October 29, 2018

(X) ACTION/DECISION

() INFORMATION

I. TITLE: Request for a nine month extension by the Board of Certificate of Need (CON) SC-16-19 issued to Trident Medical Center, LLC d/b/a Berkeley Medical Center (BMC) for construction of a new 50 bed acute care hospital to include an MRI and a CT scanner.

II. SUBJECT: BMC requests Board approval for extension of CON SC-16-19.

III. FACTS: CON SC-16-19 was issued to BMC on May 26, 2016 for the referenced project. The original CON had an expiration date of May 26, 2017. BMC requested a first staff extension of the CON on April 24, 2017, which was more than 30 days prior to expiration. BMC received CON SC-16-19-EXT-1 on May 17, 2017, and it was valid until February 26, 2018, a period of nine months from original expiration of the CON. BMC requested a second staff extension of the CON on January 26, 2018, which was 30 days prior to expiration. BMC received CON SC-16-19-EXT-2 on March 5, 2018, and it will expire on November 26, 2018. In accordance with R. 61-15, Section 601, BMC submitted a third extension request to the Department on August 24, 2018, which is more than 90 days prior to expiration.

IV. ANALYSIS: Department staff have reviewed all relevant information concerning this third extension request and find that circumstances beyond the control of BMC have contributed to the need for further extension of CON SC-16-19. Specifically, the second staff extension of CON SC-16-19 is the subject of a pending action in the SC Administrative Law Court brought by Medical University Hospital Authority (MUHA), the parent of MUSC. BMC has explained in its extension request that they believe it prudent to toll the project until such time as that case is resolved, and staff do not disagree. Staff expect that additional extensions by the Board will be necessary until such time as valid construction contract is executed between BMC and its contractor sometime in 2019, or upon the resolution of the pending litigation.

V. RECOMMENDATION: Department staff recommend the Board finds that BMC has demonstrated extenuating circumstances beyond its control have prevented the project from advancing and that a 9-month extension of CON SC-16-19 be granted.

Approved by:



Shelly Bezanson Kelly
Director of Health Regulation

Attachments:

- A) CON SC-16-19
- B) Letter granting first extension of CON
- C) Letter granting second extension of CON
- D) Letter requesting third extension of CON

South Carolina Department of Health
and Environmental Control



Certificate of Need

SC-16-19

IS HEREBY ISSUED TO FACILITY: Berkeley Medical Center

FACILITY LOCATION: Moncks Corner, South Carolina
Berkeley County

LICENSEE: Trident Medical Center, LLC

AGENT: Jim Rardin

FOR: Construction of a new 50 bed acute care hospital to include an MRI and CT scanner.

TOTAL PROJECT COST: \$115,000,000

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until May 26, 2017 which is a period of twelve (12) months from the date of issuance unless the applicant receives an extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 26th day of May, 2016.

A handwritten signature in blue ink, appearing to read "Louis W. Eubank", is written over a horizontal dashed line.

Louis W. Eubank
Director, Certificate of Need Program





Article #: 92148969009997901408386991

May 17, 2017

VIA EMAIL AND CERTIFIED MAIL

William R. Thomas
Parker Poe
1221 Main Street, Suite 1100
Columbia, SC 29201

Re: Request for an Extension of Certificate of Need No. SC-16-19
Project: Construction of a new 50 bed acute care hospital to include an MRI and CT scanner.
Berkeley Medical Center

Dear Mr. Thomas:

The South Carolina Department of Health and Environmental Control ("Department") has reviewed your request for an extension of the above referenced Certificate of Need ("Certificate" or "CON"). A Certificate is valid for one year from the date of issuance. SC Code § 44-7-230(D). If a project is not completed before the expiration of that year, or if progress on the project does not comply with the timetable set forth in the CON application, then the Department may revoke the Certificate. The holder of a CON may apply to the Department for an extension of the Certificate's expiration period pursuant to S.C. Code Regs. 61-15 sections 601 through 603. Initially, Department staff may grant up to two extensions of as long as nine months apiece upon a proper showing that substantial progress has been made in implementing the project. Subsequent extensions may only be granted by the Department's Board. SC Code § 44-7-230(D).

Based on the material you provided in support of your request, it is the decision of the Department to **grant you a nine (9) month initial extension** for Certificate No. SC-16-19. The Department's decision is based on the following findings:

- You have demonstrated that circumstances beyond the control of the applicant have prevented compliance with the Project's approved timetable, and
- You have provided the Department with reasonable assurance that the Project will be under construction or implemented within the requested extension period.

A copy of the Department's Guide to Board Review is enclosed for your convenience. Should you require further information, please contact me at (803) 545-3652.

Sincerely,

A handwritten signature in blue ink, appearing to read "Louis Eubank", with a long horizontal flourish extending to the right.

Louis Eubank
Director, Certificate of Need Program

Enclosures: Guide to Board Review.
CON SC-16-19-EXT-1

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

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 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
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Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

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 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

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1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
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 - Rebuttal by Requestor(s) [10 minutes]

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7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
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The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Department of Health and Environmental Control



Certificate of Need

SC-16-19-EXT-1

IS HEREBY ISSUED TO FACILITY: Berkeley Medical Center

FACILITY LOCATION: Moncks Corner, South Carolina
Berkeley County

LICENSEE: Trident Medical Center, LLC

AGENT: Jim Rardin

FOR: Construction of a new 50 bed acute care hospital to include an MRI and CT scanner.

TOTAL PROJECT COST: \$115,000,000

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until February 26, 2018 which is a period of nine (9) months from the date of prior Certificate of Need expiration unless the applicant receives an additional extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 17th day of May.

Louis W. Eubank
Director, Certificate of Need Program





Article #: 92148969009997901411091035

March 5, 2018

VIA EMAIL AND CERTIFIED MAIL

William R. Thomas, Esquire
Parker Poe
1221 Main Street, Suite 1100
Columbia, SC 29201

Re: Request for an Extension of Certificate of Need No. SC-16-19
Project: Construction of a new 50 bed acute care hospital to include an MRI and CT scanner.
Berkeley County, South Carolina

Dear Mr. Thomas:

The South Carolina Department of Health and Environmental Control ("Department") has reviewed your request for an extension of the above referenced Certificate of Need ("Certificate" or "CON"). A Certificate is valid for one year from the date of issuance. SC Code § 44-7-230(D). If a project is not completed before the expiration of that year, or if progress on the project does not comply with the timetable set forth in the CON application, then the Department may revoke the Certificate. The holder of a CON may apply to the Department for an extension of the Certificate's expiration period pursuant to S.C. Code Regs. 61-15 sections 601 through 603. Initially, Department staff may grant up to two extensions of as long as nine months apiece upon a proper showing that substantial progress has been made in implementing the project. Subsequent extensions may only be granted by the Department's Board. SC Code § 44-7-230(D).

Based on the material you provided in support of your request, it is the decision of the Department to **grant you a second nine (9) month extension** for Certificate No. SC-16-19. The original The Department's decision is based on the following findings:

- You have demonstrated that circumstances beyond the control of the applicant have prevented compliance with the Project's approved timetable, and
- You have provided the Department with reasonable assurance that the Project will be under construction or implemented within the requested extension period.

Based on the assurances you have provided the Department, it is understood that the wetlands permitting process currently before the U.S. Army Corps of Engineers will be complete, or nearly complete, by the time of expiration of this second CON extension. Further extensions of SC-16-19 may be granted by the Department Board, with recommendations made by staff, based on current information **to include the status of this permitting process.**

S.C. Department of Health and Environmental Control

2600 Bull Street, Columbia, SC 29201 (803) 898-3432 www.scdhec.gov

A copy of the Department's Guide to Board Review is enclosed for your convenience. Should you require further information, please contact me at (803) 545-3652.

Sincerely,

A handwritten signature in blue ink, appearing to read "Louis Eubank", with a long, sweeping underline.

Louis Eubank, Chief
Bureau of Healthcare Planning and Construction

cc: M. Elizabeth Crum, Esquire (email)

Enclosures: Guide to Board Review.
CON SC-16-19-EXT-2

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

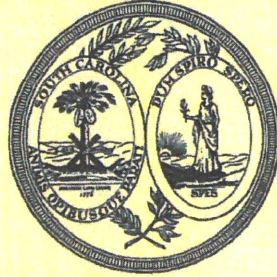
III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Department of Health
and Environmental Control



Certificate of Need

SC-16-19-EXT-2

IS HEREBY ISSUED TO FACILITY: Berkeley Medical Center

FACILITY LOCATION: Moncks Corner, South Carolina
Berkeley County

LICENSEE: Trident Medical Center, LLC

AGENT: Jim Rardin

FOR: Construction of a new 50 bed acute care hospital to include an MRI and CT scanner.

TOTAL PROJECT COST: \$115,000,000

This Certificate is being issued in accordance with the Code of Laws of South Carolina.

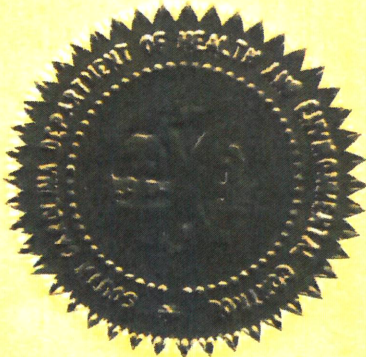
In determining the need for this project, the South Carolina Department of Health and Environmental Control has taken into consideration the "Criteria for Project Review" and the South Carolina Health Plan as established in the "State Certification of Need and Health Facility Licensure Act," S.C. Code Ann. 44-7-110 et seq. and Regulation 61-15, "Certification of Need for Health Facilities and Services."

This Certificate of Need is valid until November 26, 2018 which is a period of nine (9) months from the date of prior Certificate of Need expiration unless the applicant receives an additional extension from the Department in accordance with applicable regulations.

Witness to this Certificate is confirmed by my signature and the seal of the Department of Health and Environmental Control this 5th day of March, 2018.

A handwritten signature in blue ink, appearing to read "Louis W. Eubank", written over a horizontal dashed line.

Louis W. Eubank, Chief
Bureau of Healthcare Planning and Construction





William R. Thomas
Partner
Telephone: 803.253.8658
Direct Fax: 803.255.8017
willthomas@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

August 24, 2018

Via E-mail (LUCASLM@dhec.sc.gov) &
Hand Delivery

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201



Re: **Trident Medical Center, LLC, d/b/a Berkeley Medical Center
Certificate of Need for the Construction of a New 50-Bed Hospital to Include
an MRI and CT Scanner
CON Number: SC-16-19
Third Extension Request**

Dear Ms. Longshore:

On behalf of our client, Trident Medical Center, LLC d/b/a Berkeley Medical Center ("Trident"), pursuant to S.C. Code Ann. § 44-7-230(D) and S.C. Code Ann. Regs. 61-15, § 601.3, we are writing to request that the Board approve a third extension of Trident's Certificate of Need ("CON") issued by the Department on May 26, 2016, for the construction of a new 50-bed hospital in Moncks Corner, Berkeley County (SC-16-19) ("Berkeley Medical Center Project" or "Project") for the reasons set forth more fully herein.

Pursuant to Section 601.4 of the "CON Regulations" (S.C. Code Ann. Regs. 61-15), a request for an extension must be submitted to the Board at least three months prior to the expiration of the CON. Trident's CON will expire on November 26, 2018. See **Exhibit A**. Thus, Trident timely submits this request for a third extension.

Trident submits the following information, required by Section 602.2 of the CON Regulations, demonstrating substantial progress and justification for the extension request:

a. A detailed description of any changes in the configuration, costs, services, or scope of the project.

RESPONSE: There are no changes to the scope of the Project, its configuration, costs, or services. As set forth in greater detail below, Trident has experienced delays in implementing the project due to an unforeseen wetlands issue and more recently because the Medical University Hospital Authority's ("MUHA") has petitioned for a contested case challenging the Department's staff approval of Trident's second CON extension request.

To date, Trident has incurred \$15,000 in costs related to Department fees, \$2,150,000 for the purchase of the property, and approximately \$68,000 in costs related to consultants who are assisting Trident with the resolution of the wetlands issue, which involves a ditch, which has been designated as a stream, running through the property where Trident intends to build its hospital in Moncks Corner.

b. A detailed description and documentation of any progress on the project including preparation of construction drawings, the securing of necessary funds and building permits, and commencement of any construction.

RESPONSE: Trident expended \$2,150,000 for the purchase of the land, and the site has been procured.¹ Conceptual site plans for the hospital have been completed. However, as set forth in Trident's previous extension requests (**Exhibit B** and **Exhibit C**), implementation of the Berkeley Medical Center Project has been delayed due to wetlands permitting issues. A detailed timeline of events associated with the wetlands issue was included with Trident's second extension request (**Exhibit C**) and is reproduced and updated for your reference below:

May 2, 2016	Request for an Approved Jurisdictional Determination is made to the Army Corp of Engineers
May 26, 2016	CON issued by the Department
August 2016	S&ME, a geotechnical engineering firm, is engaged to provide assistance with wetlands issue
August 23, 2016	Request for quote to move ditches on the property is submitted
September 20, 2016	Survey awarded to Atlantic Surveying, Inc.
September 21, 2016	Department of the Army's response to May 2, 2016 request (attached at Exhibit 1)
October 3, 2016	Decision to engage work in May 2017 for Nationwide Permit #46 to avoid reapplication
August 7, 2017	Received Corps determination letter
August 7, 2017	S&ME submits Nationwide Permit Application (attached at Exhibit 2)
September 22, 2017	Department of the Army's response to 8/7/17 Nationwide Permit Application, determining it does not meet terms of a Nationwide Permit and must be evaluated as an Individual Permit, also requesting additional information (attached at Exhibit 3)
October 2, 2017	Nationwide Permit denied due to linear feet of stream bed. Individual permit must be submitted.
October 6, 2017	S&ME's Request for Nationwide Permit Waiver (attached at Exhibit 4)
November 6, 2017	S&ME's Individual Permit Application – Coastal Zone Consistency Request re: relocation of drainage canal and freshwater wetland (attached at Exhibit 5)

¹ With respect to S.C. Reg. 61-15 § 603, "Criteria for Extension" and the determination of whether substantial progress has been made, Trident has at this time only procured the site. Because of the wetlands issue, which constitutes extenuating circumstances, architectural progress has not been made on this project. Progress in this regard has not been made because Trident does not yet know how the hospital will be positioned on the site because it is has not been determined where the man-made ditch, which has since been determined as waters of the state, will be relocated.

December 4, 2017	Joint Public Notice (attached at Exhibit 6)
January 12, 2018	USACE working on Comment Letter
January 15, 2018	DHEC's State Certification (attached at Exhibit 7)
July/August 2018	USACE requiring either the purchase of mitigation credits in full at a cost of \$660,000 or requiring Trident to enter into a plan whereby credits are purchased and creation credits are realized at a cost of \$440,000 with a five year monitoring period. Trident is pursuing funding for these credits and does not anticipate problems with obtaining such funding.

Notably, prior to the United States Army Corp of Engineers ("USACE") providing notice to Trident that it would be required to purchase wetlands mitigation credits, MUHA petitioned the Administrative Law Court ("ALC") for a contested case hearing. MUHA is appealing the Department staff's decision to approve Trident's second extension request. The contested case is currently pending before the ALC. The parties have filed cross motions for summary judgment and are awaiting the ALC's decision on those motions.

Given MUHA's sudden decision to oppose the extension of the Berkeley Medical Center² Project CON (a project it supported at the time the CON application was reviewed and approved), Trident is hesitant to expend a half-million dollars or more on wetlands mitigation credits. If MUHA succeeds in its contested case, which Trident believes is frivolous, Trident's CON could be voided. Trident does not believe that it would be prudent at this time to incur another possible \$660,000 in costs on the Project given that it could be rendered null. Upon a favorable ruling from the ALC, Trident will expedite efforts to purchase the mitigation credits, resolve the wetlands permitting issues, and proceed with the implementation of the Berkeley Medical Center Project.

c. An estimated timetable for commencement and completion of all remaining components of the project.

Trident proposes the following timeline for completion of the Project once MUHA's contested case against Trident is favorably concluded and the wetlands mitigation issue is resolved.

Finalize Site	90 days from wetlands issue resolution
Architectural Contract	120 days from wetlands issue resolution
Architectural Design	180 days from wetlands issue resolution
Construction Contract	210 days from wetlands issue resolution
Start of Construction	240 days from wetlands issue resolution
Completion of Construction	30 months from start date of construction
Occupy new hospital	30 – 60 days from end of construction

² Notably, MUHA did not challenge Roper St. Francis' second CON extension request related to its 50 bed hospital project in Berkeley County to be located at "Carnes Crossroads" in the Goose Creek area.

The Honorable Lisa Lucas Longshore
August 24, 2018
Page 4

Upon a favorable ruling from the ALC, Trident will expedite the resolution of the wetlands mitigation issue to ensure that the Berkeley Medical Center Project can move forward in a timely manner.

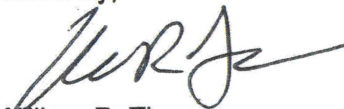
d. Documentation of compliance with the approved timetable or documented evidence that extenuating circumstance[s] beyond the control of the applicant [exist] if the timetable was not met.

RESPONSE: As set forth above, and in the attached exhibits, the Berkeley Medical Center Project has been delayed due to the unforeseen wetlands issues, which constitute extenuating circumstances beyond Trident's control. In July, Trident received notification from the USACE that Trident could purchase wetlands mitigation credits, which would resolve the permitting issue. However, in May 2018, MUHA appealed the approval of Trident's second CON extension request and alleged that the extension is not valid and that the CON is void. MUHA's appeal is completely without merit, and Trident has moved for summary judgment; however, Trident cannot expend as much as \$660,000 on wetlands mitigation credits while the contested case is still pending. In the unlikely event that MUHA were to receive a favorable ruling, the Berkeley Medical Center Project CON would be void. Consequently, Trident must minimize potential losses, which further delays the implementation of the Project.

While wetland issues are common in the location, the extent of this particular wetland's issue was unforeseen, and Trident has worked diligently to resolve it to include hiring experienced third party consultants to navigate and resolve the issue. Instead of moving forward with the permitting process, Trident is now further delayed through no fault of its own while it expends valuable time and resources litigating a meritless third-party appeal of its CON extension. For these reasons, Trident respectfully requests that the Board find (i) that Trident has made substantial progress on its Berkeley Medical Center Project, (ii) that Trident has been delayed in implementing the Project due to extenuating circumstances beyond its control, and (iii) that a third extension of Berkeley Medical Center Project is justified and approved.

With best regards, I am

Sincerely,



William R. Thomas

WRT:jbc
Enclosures

cc: Margaret P. Murdock, Esquire (via hand delivery with enclosures)
Todd Gallati (via email with enclosures)