

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



Catherine B. Templeton, Director

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

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

**Minutes of the January 9, 2014, meeting of the  
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, January 9, 2014, at 9:00 a.m. in the Board Room at the South Carolina Department of Health and Environmental Control building, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman  
Member-At-Large

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

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

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

Charles M. Joye, II, P.E. (Via telephone)  
3<sup>rd</sup> District

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

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

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

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

**Item 1: Board Minutes of the December 12, 2013 meeting** (Attachment 1-1)

*Mr. Batts moved, seconded by Mr. Lutz, to approve the minutes as submitted for the December 12, 2013, meeting. The Board voted and Motion carried.*

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

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated thirty-six (36) Consent Orders had been issued with total penalties of \$79,175.

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

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

Ms. Melinda Bradshaw, Health Regulation Liaison, stated one (1) Consent Order had been issued with no penalty being assessed.

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

**Item 4: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, State Register Document No. 4430, Legislative Review is required** (Attachment 4-1)

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

Statutory authority for Regulation 61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, resides in S.C. Code Ann. Sections 44-7-110 through 44-7-394 (2002 & Supp. 2012) and 44-41-10(d) (2002). The Department substantially amended the regulation in April 1992 and again in 2002 for perinatal services. S.C. Code Ann Section 1-23-120(J) (Supp. 2012) requires state agencies to perform a review of its regulations every five years and update them if necessary. The feedback on the five year review from the South Carolina Hospital Association (SCHA) indicated that Regulation 61-16 was outdated and needed substantial revision. The Department developed the text to amend R.61-16 in an effort to make the regulation current and incorporate improvements in health care practices. The amendments substantially incorporated the language proposed by the SCHA.

Ms. Thompson added an addendum to the Board package correcting an error in the codes listed in Section 1902. (Attachment 4-2)

A public hearing was conducted with several persons in attendance who spoke on this regulation amendment. (Attachment 4-3) The written comments that were provided to the Clerk by the speakers at the public hearing are included in the permanent record. (Attachment 4-4)

After discussion, *Mr. Batts moved, seconded by Mr. Wells, to find for the need and reasonableness of Proposed Regulation 61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries with the addendum correcting an error in the codes listed in Section 1902 and approve them for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 4-5)

**Item 5: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-25, Retail Food Establishments, State Register Document No. 4424, Legislative Review is required** (Attachment 5-1)

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

The regulation governing R.61-25, Retail Food Establishments is authorized pursuant to S.C. Code Ann. Section 44-1-140 (Revised 2002). The intent of R.61-25, Retail Food Establishments, is to safeguard public health and provide to consumers safe, unadulterated food and food products at the retail level. The regulation governs restaurants, grocery stores, school cafeterias and other establishments, where food is prepared and served to the public. R.61-25 was last amended in 1995. Since that amendment, there have been numerous changes in the retail food industry, including food handling practices, food equipment technology, and food preparation processes, making R.61-25 in its current form outdated. The text of the existing regulation was struck in total and amended in its entirety to meet current standards of the most recent edition of the United States Food and Drug Administration (FDA) Food Code. The FDA Food Code is the national standard for state, local, and tribal food protection programs. The FDA Food Code offers practical, science-based guidance that addresses the risk factors known to cause foodborne illness outbreaks in retail food establishment settings.

A public hearing was conducted with several persons in attendance who spoke on this regulation amendment. (Attachment 5-2) The written comments that were provided to the Clerk by the speakers at the public hearing are included in the permanent record. (Attachment 5-3)

After discussion, *Dr. Hutto moved, seconded by Dr. Kirol, to find for the need and reasonableness of Proposed Regulation 61-25, Retail Food Establishments and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 5-4)

**Item 6: Public Hearing and Request for Final Approval - Proposed Amendment of Regulation 61-68, Water Classifications and Standards, State Register Document No. 4425, Legislative Review is required** (Attachment 6-1)

Ms. Heather Preston, Director, Division of Water Quality, presented this item to the Board.

Regulation 61-68 was promulgated pursuant to Section 48-1-10 of the 1976 Code. R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the Federal Clean Water Act (CWA) requires that the Department review, and amend as necessary, this regulation once every three years in order to incorporate the most recently published Federal criterion recommendations and guidance.

A Notice of Drafting was published in the State Register. The Department emailed the details of the notice to interested parties, as well as placed the notice on the Department's website encouraging submittals for the formal comment period and providing contact information. The interested parties included, but were not limited to, representatives of environmental associations; trade, industrial, agricultural, and forestry organizations; public health, scientific, and professional groups; other Federal, State and local government agencies, and members of the general public.

The Department, with a representative of the EPA, met with stakeholders to discuss the Notice of Drafting and to receive stakeholder input regarding the issues. The Department presented the proposed methylmercury criteria from EPA and implementation options. General discussion continued and stakeholders were encouraged to provide written comments on the issues. The Department, with a representative of the EPA, met again with stakeholders to present proposed language for the adoption of the methylmercury criteria. The Department also presented language modifications to address potential misinterpretation of flow language in the Regulation and to address potential conflict with the recently adopted Regulation 61-119, Surface Water Withdrawal, Permitting, Use and Reporting. General discussion continued and the stakeholders were invited to provide any additional comments regarding the Department proposals.

A public hearing was conducted with several in attendance who spoke on this regulation amendment. (Attachment 6-2)

*After discussion, Mr. Lutz moved, seconded by Mr. Joye, to find for the need and reasonableness of the Proposed Regulation 61-68, Water Classifications and Standards and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 7: Public Hearing and Request for Final Approval – Proposed New Regulation 61-\_\_\_\_, Critical Congenital Heart Defects Screening on Newborns, State Register Document No. 4429, Legislative Review is required** (Attachment 7-1)

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

The Emerson Rose Act, S.C. Code Section 44-37-70 et seq., directed the Department to require each birthing facility licensed by the Department to perform on every newborn in its care a pulse oximetry screening test or other Department approved screening to detect critical congenital heart defects. In compliance with Emerson Rose Act, the Department, with advisement from the South Carolina Birth Outcomes Initiative Leadership Team, proposed a new regulation entitled, "Critical Congenital Heart Defects Screening on Newborns." The regulation includes purpose and scope, definitions, screening criteria, procedures and religious objections.

A public hearing was conducted and no one in attendance spoke on this new regulation. (Attachment 7-2)

*After discussion, Dr. Hutto moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed New Regulation, Critical Congenital Heart Defects Screening on Newborns, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 8: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-107.4, Solid Waste Management: Yard Trash and Land-clearing Debris; and Compost, State Register Document 4432, Legislative Review is required** (Attachment 8-1)

Mr. Kent Coleman, Director, Division of Mining and Solid Waste Management, presented this item to the Board.

Pursuant to 1976 Code Section 44-96-10 et seq., the Department proposes to amend Regulation Section 61-107.4 Solid Waste Management: Yard Trash and Land-clearing Debris; and Compost. This regulation section became effective April 23, 1993, and has never been amended. The proposed amendment updates the regulation to promote the production of mulch and compost, to clarify permitting requirements and to establish exemptions from the regulation. The proposed amendment promotes the production of compost by expanding the types of materials that may be used to produce compost. It is estimated that nearly 21% of the material in landfills is food waste. Encouraging the use of food waste in compost both reduces the material being landfilled, and improves the quality of the compost produced. The amendment exempts certain activities and proposed conditions for exempting others. It established the process for seeking a permit to operate and outlines location, design and operating criteria for permitted facilities to ensure that mulch and compost are produced in a manner that is protective of the environment. It establishes testing standards for compost to ensure that it can be applied in a manner that is protective of public health and the environment. The amendment clarifies that violations subject a violator to the issuance of a Department order, to a civil enforcement action or to a criminal enforcement action. The Department initiated amendments to the regulation during earlier drafting periods, but was unable to complete the promulgation process. Comments received during earlier drafting periods were considered and incorporated into the current draft as appropriate.

Department staff consulted with representatives of state and local government, existing compost producers, the waste disposal industry, the State Solid Waste Advisory Council, the USDA's National Resource Conservation Service, Clemson Department of Plant Industry, environmental groups and the Association of Counties and the South Carolina Municipal Association.

A public hearing was conducted and no one in attendance spoke on this proposed amendment of regulation. (Attachment 8-2)

After discussion, *Mr. Lutz moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed Amendment of Regulation, 61-107.4 Solid Waste Management: Yard Trash and Land-clearing Debris; and Compost, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 9: Public Hearing and Request for Final Approval – Proposed New Regulation 61-\_\_\_\_, Standards for Licensing In-Home Care Providers, State Register Document No. 4433, Legislative Review is required** (Attachment 9-1)

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

The Licensure of In-Home Care Providers Act, S.C. Code Section 44-70-10 et seq. (Supp. 2012) directed the Department to promulgate regulations for the licensure of in-home care providers. The Department proposed a new regulation entitled, "Standards for Licensing In-Home Care Providers." The regulation will provide standards and procedures including license application and renewal procedures; criminal records checks for licensure applicants, which may include criminal offenses that may preclude licensure; drug testing of licensure applicants; responsibilities and duties of a licensee, including the requirements for bonding; fees the Department may charge to process an application for a license, the issuance of a license, the renewal of a license, and the reinstatement of a revoked or suspended license; criteria that a licensee's employee, agent, independent contractor, or referral must satisfy before providing in-home care service. Pursuant to the Act, these criteria include personal information, completion of a minimum education requirement, completion of minimum training and continuing education requirements and screening for communicable diseases; standards for liability and other appropriate insurance coverage; and sanctions the Department may impose for violation of this chapter, including the suspension or revocation of a license or the imposition of a monetary penalty.

A public hearing was conducted with several persons in attendance who spoke on this regulation amendment. (Attachment 9-2)

After discussion, *Mr. Wells moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed New Regulation, Standards for Licensing In-Home Care*

*Providers, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 10: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-8, Vaccination, Screening and Immunization Regarding Contagious Diseases, State Register Document No. 4434, Legislative Review is Required** (Attachment 10-1)

Ms. Leann Bailey, Director, Immunization Division, presented this item to the Board.

The Department proposes to amend R.61-8, Vaccination, Screening and Immunization Regarding Contagious Diseases to implement S.C. Code Ann. Sections 44-29-40(A) and 44-29-180.

The Department proposed amendments to the regulation to update language regarding religious exemption criteria; clarify compliance of the reporting requirements with the federal Family Educational Rights and Privacy Act (FERPA); facilitate compliance with the McKinney-Vento Homeless Assistance Act; reflect the use of electronic forms in addition to paper copies provided by the Department; make general editorial revisions to clarify and improve the language; and amend the title of the regulation to more accurately reflect the subject matter.

A public hearing was conducted and no one in attendance spoke on this proposed amendment of regulation. (Attachment 10-2)

*After discussion, Mr. Lutz moved, seconded by Dr. Kirol, to find for the need and reasonableness of the Proposed Amendment of Regulation, 61-8, Vaccination, Screening and Immunization Regarding Contagious Diseases, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 11: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-51, Public Swimming Pool Regulations, State Register Document No. 4431, Legislative Review is required** (Attachment 11-1)

Mr. Doug Kinard, Director, Division of Drinking Water Protection, presented this item to the Board.

Regulation 61-51, Public Swimming Pool Regulations, was promulgated to provide consistently safe and healthy recreation for our citizens and visitors when they choose to swim in public pools throughout the State. The Department proposed to amend the regulation to incorporate the lifeguard requirement changes adopted into the Recreational Waters Act, SC Code 44-55-2390 as

amended June 2012, and to clarify the Public Swimming Pool definition and grammatical and citation changes.

A public hearing was conducted with one person in attendance who spoke on this regulation amendment. (Attachment 10-2)

After discussion, *Mr. Batts moved, seconded by Mr. Wells, to find for the need and reasonableness of the Proposed Amendment of Regulation, 61-51, Public Swimming Pool Regulation, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

**Item 12: Agency Affairs**

Director Templeton briefed the Board on the Pinewood Trust Site in Sumter, South Carolina.

After discussions, *the Board accepted this as information.*

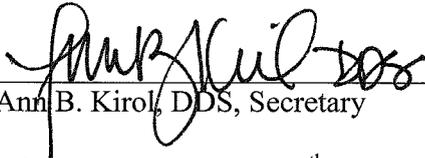
**Item 13: Legal Report**

Mr. Taylor gave a status of the CON matter pending before the Supreme Court.

Chairman Amsler adjourned the meeting.

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

Respectfully submitted,

  
Ann B. Kirol, DDS, Secretary

Minutes approved this 13<sup>th</sup> day of March 2014.

ATTEST:

  
Allen Amsler, Chairman

#### Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of December 12 meeting
- 2-1 Administrative Orders, Consent Orders issued by Environmental Affairs
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 4-1 Proposed Amendment of R.61-16, Minimum Standards for Licensing Hospitals and Institutional Infirmaries, State Register Document No. 4430
- 4-2 Addendum to regulation package before Board
- 4-3 Public hearing sign-in sheet
- 4-4 Written comments presented during public hearing
- 4-5 Verbatim Transcript
- 5-1 Proposed Amendment of R.61-25, Retail Food Establishments, State Register Document No. 4424
- 5-2 Public hearing sign-in sheet
- 5-3 Written comments presented during public hearing
- 5-4 Verbatim Transcript
- 6-1 Proposed Amendment of Regulation 61-68, Water Classifications and Standards, State Register Document No. 4425
- 6-2 Public hearing sign-in sheet
- 6-3 Verbatim Transcript
- 7-1 Proposed New Regulation 61-\_\_\_, Critical Congenital Heart Defects Screening on Newborns, State Register Document No. 4429
- 7-2 Public hearing sign-in sheet
- 7-3 Verbatim Transcript
- 8-1 Proposed Amendment of R.61-107.4, Solid Waste Management: Yard Trash and Land-clearing Debris; and Compost, State Register Document No. 4432
- 8-2 Public Hearing sign-in sheet
- 8-3 Verbatim Transcript

- 9-1 Proposed New Regulation 61-\_\_\_, Standards for Licensing In-Home Care Providers, State Register Document No. 4433
- 9-2 Public Hearing sign-in sheet
- 9-3 Verbatim Transcript
- 10-1 Proposed Amendment of R.61-8, Vaccination, Screening and Immunization Regarding Contagious Diseases, State Register Document No. 4434
- 10-2 Public Hearing sign-in sheet
- 10-3 Verbatim Transcript
- 11-1 Proposed Amendment of R.61-51, Public Swimming Pool Regulation, State Register Document No. 4431
- 11-2 Public Hearing sign-in sheet
- 11-3 Verbatim Transcript