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Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

October 23, 2015

Mr. R. Scott Davis III
Chief, Air Planning Branch
EPA Region 4
Atlanta Federal Center
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8909

Re: South Carolina Air Quality Implementation Plan, 2012 Particulate Matter (PM) NAAQS Infrastructure Certification - Prehearing Submittal

Dear Mr. Davis:

On December 14, 2012, the EPA finalized a revised National Ambient Air Quality Standards (NAAQS) for Particulate Matter (78 FR 3086, published January 15, 2013). With this rule, the EPA strengthened the annual primary fine particulate matter ($PM_{2.5}$) standard by lowering the level from 15.0 to 12.0 micrograms per cubic meter ($\mu g/m^3$). Sections 110(a)(1) and (2) of the Clean Air Act (CAA) require all states to submit plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Sections 110(a)(1) and (2) further require states to address basic State Implementation Plan (SIP) requirements, including but not limited to the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a)(1) requires states to submit SIPs within three (3) years after promulgation of a new or revised NAAQS, or December 14, 2015, in this case.

On October 23, 2015, the Department of Health and Environmental Control (Department) published a public notice in the *South Carolina State Register* notifying the public of the proposed 2012 PM NAAQS infrastructure SIP certification, and providing the public the opportunity to request a public hearing on the proposed 2012 PM NAAQS infrastructure SIP certification (Attachment C). Pursuant to 40 CFR 51.102, if the Department does not receive comments or a request for a public hearing we will not hold a public hearing on the proposed 2012 PM NAAQS infrastructure SIP certification. We are hereby submitting this prehearing infrastructure SIP package to the EPA and are requesting their comments by 5:00 p.m. on November 23, 2015.

As outlined in Attachment A to this letter, the Department is certifying to the EPA that it has addressed the "infrastructure" elements required by Section 110(a)(1) and (2) of the CAA pertaining to the attainment of the 2012 PM NAAQS in South Carolina. We are providing the

SIP Submittal Completeness Criteria Checklist as Attachment B; the October 23, 2015, *South Carolina State Register* Notice of Intent to Revise the SIP/Notice of Public Hearing as Attachment C; and the South Carolina Pollution Control Act (SC Code Section 48-1-10 *et seq.*) on CD as Attachment D.

The Department appreciates the assistance provided by your staff regarding the formulation of this plan. Should you have any questions or comments concerning South Carolina's 2012 PM NAAQS infrastructure SIP certification, please contact Marie Brown of my staff at (803) 898-1796 or brownmf@dhec.sc.gov.

Sincerely,

Robert J. Brown, Director
Division of Air Assessment and Regulation
Bureau of Air Quality
South Carolina Department of Health and Environmental Control

ec: Lynorae Benjamin, Chief, Regulatory Development Section, EPA Region 4
Brad Akers, Regulatory Development Section, EPA Region 4
Myra Reece, Chief, Bureau of Air Quality, SCDHEC
Rhonda Thompson, Assistant Bureau Chief, Bureau of Air Quality, SCDHEC
Maeve Mason, Manager, Regulation and SIP Management Section, BAQ, SCDHEC

Enclosures:
Attachment A - South Carolina Certification Clean Air Act Section 110(a)(1) and (2), PM Requirements
Attachment B - SIP Submittal Completeness Criteria Checklist
Attachment C – October 23, 2015, *South Carolina State Register* Notice of Intent to Revise the SIP/Notice of Public Hearing
Attachment D – South Carolina Pollution Control Act (SC Code Section 48-1-10 *et seq.*) on CD

Attachment A

South Carolina (SC) Certification
Clean Air Act Section 110(a)(1) and (2)
Particulate Matter (PM) Requirements

South Carolina Certification
Clean Air Act Section 110(a)(1) and (2)
2012 $PM_{2.5}$ NAAQS Requirements

Each of the basic or infrastructure requirements enumerated in the CAA Section 110(a)(1) and (2) is listed below along with the corresponding State statute granting the Department the necessary authority to implement each State Implementation Plan (SIP) element.

Emission limits and other control measures: Section 110(a)(2)(A) of the Clean Air Act (CAA) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. South Carolina Air Pollution Control Regulation 61-62.5, Standard No. 1, *Emissions form Fuel Burning Operations*; Standard No. 2, *Ambient Air Quality Standards;* and Standard No. 4, *Emission from Process Industries* serve to establish emission limits for particulate matter (PM), while Regulation 61-62.1, *Definitions and General Requirements*; Regulation 61-62.2, *Prohibition of Open Burning*; and Regulation 61-62.6, *Control of Fugitive Particulate Matter* address required control measures, means, and techniques for reducing PM. Section 48-1-50(23) of the 1976 South Carolina Code of Laws, as amended (hereinafter referred to as S.C. Code Ann.) provides the Department with the statutory authority to, "Adopt emission and effluent control regulations standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present."

Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and presentation of these data available to EPA upon request. Regulation 61.62.5, Standard No. 7, *Prevention of Significant Deterioration*, along with the *South Carolina Network Description and Ambient Air Network Monitoring Plan* (the 2012 plan, submitted to EPA on July 18, 2011, as revised and superseded), provide for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary statutory authority to "Collect and disseminate information on air and water control."

Program for enforcement of control measures: Section 110(a)(2)(C) of the CAA requires States to include a program that provides for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment new source review (NSR) requirements. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61-62.5, Standard 7.1, *Nonattainment New Source Review*, apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable. Additionally, South Carolina's PSD permitting program includes the necessary structural permitting requirements covering all regulated NSR Pollutants including: NO_x as an ozone precursor - SIP approved- June 23, 2011, NSR $PM_{2.5}$ and $PM_{2.5}$ increments - SIP-approved April 12, 2013. R. 61-62.1, Section II, *Permit Requirements* also establishes guidelines for minor source permitting which requires "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" and demonstrate that the project will not contribute to a violation of the NAAQS. S.C. Code Ann. § 48-1-50(10) provides the Department with the statutory authority to, "Require to be submitted to it and consider for approval plans for disposal system or source or any parts thereof and inspect the construction thereof for compliance with the approved plans." Further, S.C. Code Ann. § 48-1-50(11) provides the Department with the statutory authority to "Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards."

Interstate transport: Section 110(a)(2)(D) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment of the NAAQS in another State. States are required to submit 110(a)(2)(D)(i) plans to demonstrate compliance with these provisions. On June 25, 2007, South Carolina submitted its 110(a)(2)(D)(i) plan to EPA. This plan was published as proposed by EPA on May 22, 2008, however, final approval was delayed due to the Clean Air Interstate Rule (CAIR*)* remand. In the 2007 plan submittal, South Carolina made a demonstration that it met the required four-pronged set of criteria, as is now addressed in this new submittal section below.

State SIPs must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutants in amounts that will:

1. Contribute significantly to nonattainment of NAAQS for areas in another state (Prong 1), or interfere with maintenance of NAAQS by any other State. (Prong 2).

   CSAPR Better than BART – Final Rule 77 FR 33642 June 7, 2012; Effective August 6, 2012: Some states are addressing interstate transport by recognizing CSAPR allowances that are lower than that allowed them under CAIR. South Carolina does not have this option as its CSAPR allowances are greater than those under CAIR. However, the EME Homer City decision (EME Homer City Generation, LP v. EPA, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013)) addressed the states' obligation under Section 110(a)(2)(D)(i)(I) for these requirements.

   In accordance with the EME Homer City decision, a state is not required to submit a SIP pursuant to Section 110(a) which addresses Section 110(a)(2)(D)(i)(I) until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. Unless the EME Homer City decision is reversed or otherwise modified by the Supreme Court of the United States, states such as South Carolina are not required to submit Section 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. At this time, EPA has not quantified any obligation for South Carolina.

   All air quality monitors in South Carolina meet the 2012 NAAQS for $PM_{2.5}$. On December 12, 2013, South Carolina recommended to the USEPA that all of South Carolina be designated attainment for the 2012 $PM_{2.5}$ NAAQS, based on ambient monitoring and the evaluation of impacts on neighboring states. On January 15, 2015, the USEPA designated (80 FR 2266) nearly every county in the State "unclassifiable/attainment;" it deferred designation for Aiken County due to insufficient

data associated with neighboring Georgia. On April 7, 2015, the USEPA designated (80 FR 18535) the Aiken County area unclassifiable/attainment based on 2012-2014 data.

Furthermore, South Carolina does not have any $PM_{2.5}$ nonattainment or maintenance areas nor is the state within close proximity to any $PM_{2.5}$ nonattainment or maintenance areas.[1] Due to the lack of $PM_{2.5}$ nonattainment areas in or within close proximity to South Carolina, the Department has concluded that no revisions to the state's SIP are necessary at this time.

In addition, the 2012 base case emissions reported in Table IV.C-4 and C-5 of the proposed rule[2] overestimated the SO_2 and NO_X emissions reported for South Carolina's sources in 2012 by 3.3 and 2.7 times, respectively. The 2012 base case emissions were 149,515 tons per year for SO_2, and 47,462 tons per year for NO_X. The actual SO_2 emissions, reported in the Acid Rain Program, in 2012 totaled 44,958 tons per year[3] and the actual NO_X emissions in 2012 totaled 17,351 tons per year[4]. A comparison of the 2012 base case emissions results in an overestimation by a factor of 3.3 for SO2, and 2.7 for NOx. These actual contributions to downwind maintenance or nonattainment are well below the one percent threshold.

Finally, no CAA Section 126(b) findings have been made by the Administrator for any counties in South Carolina.

2. Interfere with measures required to meet the implementation plan for any other State related to Prevention of Significant Deterioration (PSD). (Prong 3)

   South Carolina's participation in the CAIR trading program and the state collaborative process; implementation of Regulation 61-62.5, Standard No. 7, and Regulation 61-62.5, Standard No. 7.1 (both of which provide for a preconstruction review and permitting program for major sources of air pollutants) collectively satisfy this criterion. Regarding CAA Section 110(a)(2)(D)(i), relating to PSD, Prong 3 South Carolina has a federally approved PSD and Nonattainment NSR program (R. 61-62.5 Standards 7 and 7.1) which provide for new and modified source preconstruction review and permitting.

3. Interfere with measures required to meet the implementation plan for any other State related to Regional Haze and Visibility. (Prong 4)

   South Carolina has a federally approved Region Haze SIP (June 28, 2012, 77 FR 38509) and has submitted to the EPA a periodic update on December 18, 2012, demonstrating that we meet the visibility requirements of the program.

[1] http://www.epa.gov/pmdesignations/2012standards/state.htm
[2] Federal Register, August 2, 2010, pp 45210-45465
[3] ampd.epa.gov/ampd/ Acid Rain Air Markets Program Data; Unit Level Data Emissions
[4] ampd.epa.gov/ampd/ Acid Rain Air Markets Program Data; Unit Level Data Emissions

Adequate resources:

- Section 110(a)(2)(E)(i) of the CAA requires states to provide for adequate personnel, funding and legal authority under State Law to carry out its SIP and related issues. The Department is provided its legal authority to establish a SIP and implement related plans, in general, under S.C. Code Ann. Section 48, Title 1. Specifically, S.C. Code Ann. § 48-1-50(12) grants the Department the statutory authority to, "Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs." S.C. Code Ann. Section 48, Title 2 grants the Department statutory authority to establish environmental protection funds. Additionally, Regulation 61-30, *Environmental Protection Fees*, provides the Department with the ability to assess fees for environmental permitting programs. The Department implements the SIP in accordance with the provisions on S.C. Code Ann. § 1-23-40 and S.C. Code Ann. Section 48, Title 1.
- Section 110(a)(2)(E)(ii) of the CAA requires that state SIPs include conflict of interest provisions for state boards that oversee CAA permits and enforcement orders. As per the South Carolina Ethics Reform Act of 1991, S.C. Code Ann. Section 8-13-700(B)(1)-(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest ... be adequately disclosed." S.C. Code Ann. Section 8-13-700(B)(1)-(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest ... be adequately disclosed."
- Section 110(a)(2)(E)(iii) of the CAA requires that state SIPs include necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision. Since SC does not have any local or regional governments responsible for implementing any portion of the CAA, no statutes or regulations are necessary to meet this requirement.

Stationary source monitoring system: Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports. Regulation 61-62.1, *Definitions and General Requirements*, provides for an emission inventory plan that establishes reporting requirements. R. 61-62.1, Section III, *Emission Inventory*, provides for an emission inventory plan that establishes reporting requirements for various pollutants from permitted facilities on annual or three year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48 -1-22 provides the Department with the necessary authority to "Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples 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."
On June 14, 2010, the Department submitted a SIP revision to EPA for amendments to R. 61-62.1 that incorporated the provisions of the rule known as the Air Emissions Reporting Requirements (AERR) (73 FR 76540, December 17, 2008). In addition, R. 61-62.1, Section IV,

Source Tests, also outlines the plan, method, and procedures by which a source should conduct and submit source tests. S.C. Code Ann. § 48-1-22 provides the Department with the necessary statutory authority to "Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples 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."

Emergency power: Section 110(a)(2)(G) of the CAA requires state to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Regulation 61-62.3, *Air Pollution Episodes* requires that the Department provide for contingency measures when air pollution episode or exceedance that may lead to substantial threat to the health or persons in the State or region. S.C. Code Ann. § 48-1-290 grants the Department the statutory authority as follows:

> "Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but an application to the Department or by direction of the Governor shall be afforded a hearing within forty-eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists."

S.C. Code Ann. § 1-23-130 provides the Department with the statutory authority to establish emergency regulations.

Future SIP revisions: Section 110(a)(2)(H) of the CAA requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. S.C. Code Ann. Section 48, Title 1 provides the Department the necessary statutory authority to revise the SIP to accommodate changes in the NAAQS.

Consultation with government officials: Section 110(a)(2)(J) of the CAA requires States to provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to Section 121 of the CAA relating to consultation. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* as well as provisions in separate implementation plans (such as the five-year review process under the Regional Haze Implementation Plan, which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs) provide for continued consultation with government officials. Additionally, S.C. Code § 48-1-50(8)

provides the Department with the necessary statutory authority to "Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements."

Public notification: Section 110(a)(2)(J) of the CAA further requires States to notify the public in NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The Department has several public notice mechanisms in place to notify the public of PM and other pollutant forecasting and has an extensive outreach program to educate the public and promote voluntary emission reduction measures. Regulation 61-62.3, *Air Pollution Episodes* requires that the Department notify the public of any air pollution episode or exceedance. S.C. Code Ann. § 48-1-60 established that, "Classification and standards of quality and purity of the environment [are] authorized after notice and hearing."

PSD and visibility protection: Section 110(a)(2)(J) of the CAA also requires State to meet applicable requirements of Part C related to PSD and visibility protection. Regulation 61.62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as the Regional Haze SIP together address visibility protection. Our discussion of PSD and visibility under prongs 3 and 4 of Section 110(a)(2)(D) also applies to this section.

Air quality modeling/data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. Regulations 61-62.5, Standards No. 2, *Ambient Air Quality Standards* and R. 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (as adopted in the SIP) require that air modeling be conducted to determine permit applicability.

Permitting fees: Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source to pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit. Pursuant to S.C. Code Ann. § 48-2-50 (1993), the Department shall charge fees for environmental programs it administers pursuant to federal and state law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Regulation 61-30, *Environmental Protection Fees*, prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations as well as establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. This regulation may be amended as needed to meet the funding requirements of the state's permitting program.

The state currently has Title V program, R. 61-62.70, *Title V Operating Permit Program*, which implements and enforces the requirements of PSD and NNSR for facilities once they begin operating.

Consultation/participation by affected local entities: Section 110(a)(2)(M) of the CAA requires States to provide for consultation and participation in SIP development by local political subdivision affected by the SIP. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (as adopted by the SIP) requires that the Department notify the public of the

application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. Likewise, S.C. Code Ann. § 48-1-50(8) allows the Department to "Cooperate with the governments of the United States or other states or State agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." Other provisions regarding public hearings and the regulation development process are included in S.C. Code Ann. Section 48, Title 1 in general, and S.C. Code Ann. § 1-23-40 (the Administrative Procedures Act). The Department has worked closely with local political subdivisions in developing the Transportation Conformity SIP, the Regional Haze Implementation Plan, the Early Action Compacts, and the 8-hour Ozone Attainment Demonstration for the York, County, South Carolina, portion of the Metrolina nonattainment area.

Together these submissions, along with South Carolina's existing Air Quality State Implementation Plan, address the necessary elements of section 110(a)(1) and (2) of the CAA for the 2012 $PM_{2.5}$ NAAQS.

Attachment B

SIP Submittal Completeness Criteria Checklist

ATTACHMENT - SIP SUBMITTAL COMPLETENESS CRITERIA CHECKLIST

SIP Submitted by: South Carolina
Date Submitted: October 23, 2015
Subject: Confirmation of 110(a)(2)(A)-(M) $PM_{2.5}$ Infrastructure Elements of South Carolina SIP

110(a)(2)(A)-(M) Requirements Checklist – South Carolina

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(A)	Emissions limits and other control measures "…include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act."	*Pollution Control Act*, S.C. Code Ann. § 48-1-50(23) (*et seq*.)	Regulation 61-62.1, *Definitions and General Requirements* (Initial EPA approval: 5/31/72) Regulation 61-62.2, *Prohibition of Open Burning*(Initial EPA approval: 5/31/72) Regulation 61-62.5, Standard No. 1, *Emissions form Fuel Burning Operations* (Initial EPA approval: 5/31/72) Regulation 61-62.5, Standard No. 2, *Ambient Air Quality and General Requirements* (Initial EPA approval: 12/28/78) Regulation 61-62.5, Standard No. 4, *Emission from Process Industries*(Initial EPA approval: 5/31/72) Regulation 61-62.6, *Control of Fugitive Particulate Matter* State only Regulation 61-30, *Environmental Protection Fees* (Promulgated June 23, 1995)
§110(a)(2)(B)	Ambient air quality monitoring/data system "…provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator"	S.C. Code Ann. § 48-1-50(14) (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (Initial EPA approval: 2/10/82) The South Carolina monitoring network

1

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(C)	Program for enforcement and control measures "…include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;" "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" …and "no permit to construct or modify a source will be issued if emissions interfere with attainment or maintenance of any state or federal standard."	S.C. Code Ann. § 48-1-50(10) (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (Initial EPA approval: 2/10/82) Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review* (Initial EPA approval: 1/14/77) Regulation 61-62.1, Section II , *Permit Requirements*
§110(a)(2)(D)	Interstate transport "contain adequate provisions— (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will-- (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);"	S.C. Code Ann. § 48-1-10 (*et seq*.)	Regulation 61-62.96, *Nitrogen Oxides (NO_X) Budget Trading Program* {SC CAIR RULE} CSAPR: "Better than BART" determination 6/07/2012, 77 FR 33642 Per the EME Homer City decision (U.S. Court of Appeals for the D.C. Circuit) the EPA has not quantified an obligation for South Carolina to address any interstate nonattainment or interference with a maintenance area. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (Initial EPA approval: 2/10/82) Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review* (Initial EPA approval: 1/14/77) Regional Haze SIP (Initial EPA approval: 6/28/2012), periodic update submitted on 12/18/2012

2

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(E)(i)	Adequate resources "…provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);"	S.C. Code Ann. § 48-1-50(12) (*et seq*.) *Environmental Protection Fund Act of 1993*, S.C. Code Ann. § 48-1-50 (*et seq*.)	These elements, 110(a)(2)(E)(i-iii), are met when EPA does a completeness determination for each SIP submittal. Each submittal provides for adequate personnel, funding, and legal authority under State Law to carry out their SIPs and related issues. This information is understood and contained in all prehearing and final SIP submittal packages in the historical record of the rule. State only Regulation 61-30, *Environmental Protection Fees* (Promulgated 6/23/95 S.C. State Register Document No. 1822).
§110(a)(2)(E)(ii)	"(ii) requirements that the state comply with the requirements respecting state boards under section 128, and"	S.C. Code Ann. § 48-1-10 (*et seq*.)	
§110(a)(2)(E)(iii)	"(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;"		SC does not have any local agencies that would be affected by these requirements.
§110(a)(2)(F)	Stationary source monitoring system "…require, as may be prescribed by the Administrator— (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; "	S.C. Code Ann. § 48-1-50 (22) (*et seq*.)	Regulation 61-62.1, *Definitions and General Requirements* (Initial EPA approval: 5/31/72) R. 61-62.1, Section IV, *Source Tests* On June 14, 2010, the Department submitted a SIP revision to EPA for amendments to R. 61-62.1 that incorporated the provisions of the rule known as the Air Emissions Reporting Requirements (AERR) (73 FR 76540, December 17, 2008).

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(G)	Emergency power "...provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;"	S.C. Code Ann. § 48-1-290 (*et seq*.) *Administrative Procedures Act*, S.C. Code Ann. § 1-23-130 (*et seq*.)	Regulation 61-62.3, *Air Pollution Episodes* (Initial EPA approval: 5/31/72)
§110(a)(2)(H)	Future SIP revisions "…provide for revision of such plan— (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (iii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act;"	S.C. Code Ann. § 48-1-10 (*et seq*.)	This information typically comes in the cover letter of each SIP submission and is verified under the completeness criteria for SIP submittals.
§110(a)(2)(I)	Nonattainment "…in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);"	S.C. Code Ann. § 48-1-10 (*et seq*.)	The State Implementation Plan(s) meet this requirement. It is accomplished through (1) the SIP submittals and subsequent approval of those plans redesignating areas to attainment and (2) updates to maintenance plans; these are collectively contained in Table E - Nonregulatory Provisions of the SIP.
§110(a)(2)(J) (§ 121 consultation)	Consultation with government officials "…meet the applicable requirements of section 121 (relating to consultation),"	S.C. Code Ann. § 48-1-50(8) (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (Initial EPA approval: 2/10/82) The SC Regional Haze Implementation Plan

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(J) **(§ 127 public notification)**	Public notification "…meet the applicable requirements of section 127 of this title,"	S.C. Code Ann. § 48-1-60 (*et seq*.)	Regulation 61-62.3, *Air Pollution Episodes*
§110(a)(2)(J) (PSD)	PSD and visibility protection "…meet the applicable requirements of … part C (relating to prevention of significant deterioration of air quality and visibility protection);"	S.C. Code Ann. § 48-1-10 (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* The SC Regional Haze Implementation Plan
§110(a)(2)(K)	Air quality modeling/data "…provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;"	S.C. Code Ann. § 48-1-10 (*et seq*.)	Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards* Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*
§110(a)(2)(L)	Permitting fees "…require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover— (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;"	S.C. Code Ann. § 48-2-50 (*et seq*.)	State only Regulation 61-30, *Environmental Protection Fees*

Section 110(a) element	Element/CAA Text	Statute	How Addressed in Submittal
§110(a)(2)(M)	Consultation/participation by affected local entities "…provide for consultation and participation by local political subdivisions affected by the plan."	S.C. Code Ann. § 48-1-50(8) (*et seq*.) S.C. Code Ann. § 1-23-40 (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* SIP Items contained in or to be contained in Table e – Nonregulatory Provisions -Transportation Conformity SIP (updated November 19, 2008) -Early Action Compacts and Attainment Demonstration -The Regional Haze Implementation Plan (submitted December 21, 2007) -Charlotte-Gastonia-Rock Hill, NC-SC (York County, SC portion of Metrolina Area) Attainment Demonstration (to be submitted November 30, 2009) -Cherokee County 110 (a) (1) Maintenance Plan
§§110(a)(2)(C) & 110(a)(2)(J)	§110(a)(2)(J) "meet the applicable requirements of … part C (relating to prevention of significant deterioration of air quality and visibility protection);" §110(a)(2)(C) … "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;"	S.C. Code Ann. § 48-1-10 (*et seq*.)	Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* Regulation 61-62.5, Standard No. 7.1 Nonattainment New Source Review (NSR) Regulation 61-62.3, *Air Pollution Episodes* The SC Regional Haze Implementation Plan

Attachment C

South Carolina State Register Notice of General Public Interest and Notice of Public Hearing

STATE BOARD OF EDUCATION

ERRATA

CHAPTER 43
Statutory Authority: 1976 Code Sections 59-5-60, 59-21-510, 59-21-580, 59-33-10 et seq., 59-36-10 et seq., and 20 U.S.C. 1400 et seq.

The South Carolina Board of Education submitted a Drafting Notice to amend Regulation 43-243 (R.43-243), Special Education, Education of Students with Disabilities, which was published in the *State Registe*r, Volume 39, Issue 7, on July 24, 2015.

The Drafting Notice stated that "Legislative review of this proposal is not required". Upon further review, a determination was made that Legislative review of R.43-243 is required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

Revision of Air Permit Modeling Exemption and Deferral Guidelines

The South Carolina Department of Health and Environmental Control (Department or DHEC) has revised the criteria that is used to determine when a facility may exempt or defer emissions from the air compliance demonstration as required under Regulation 61-62.1, Definitions and General Requirements, Section II(A)(2), when a permit is requested for a source of air emissions. These criteria will be used to identify which emissions covered under Regulation 61-62.5, Standards No. 2 and No. 7 of this regulation may either be exempt or deferred from the compliance demonstration that is submitted with the permit request. This guidance will be maintained by the Department and will be posted on the DHEC website at: http://www.scdhec.gov/environment/docs/Standard2and7ModelingExemptionandDeferralGuidelines.pdf.

If you have questions, please contact John Glass, Division of Emissions, Evaluation, and Support at (803) 898-4074 or glassjp@dhec.sc.gov.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

NOTICE TO REVISE AIR QUALITY STATE IMPLEMENTATION PLAN

Statutory Authority: S.C. Code Sections 48-1-10 et seq.

The South Carolina Department of Health and Environmental Control (Department) is publishing this Notice of General Public Interest to provide interested persons the opportunity to comment on the Department's response to meet obligations to the U.S. Environmental Protection Agency (EPA) for the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM). The Department proposes to address the requirements under sections 110(a)(1) and (2) of the Clean Air Act (CAA) for State Implementation Plans (SIP) in a SIP update known as infrastructure SIP certification. These requirements were developed to assure attainment and maintenance of the NAAQS. To be considered, the Department must receive comments by 5:00 p.m. on November 23, 2015, the close of the comment period.

The Department is also providing the public with the opportunity to request a public hearing on the issue. If requested, the Department will hold a public hearing on November 30, 2015 at 10:00 a.m., in the Wallace Room of the Sims Building, 2600 Bull Street, Columbia, South Carolina. The Department invites the public to attend. However, pursuant to 40 CFR 51.102, if the Department does not receive a request for a public hearing by the close of the comment period, 5:00 p.m. on November 23, 2015, the Department will cancel the public hearing. If the Department cancels the public hearing, then the Department will notify the public at least one week prior to the scheduled hearing via the Scheduled Public Hearings webpage: http://www.scdhec.gov/environment/baq/Regulation-SIPManagement/public_hearings.asp. Interested persons may also contact Marie Brown, Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via phone at (803) 898-1796 or email at brownmf@dhec.sc.gov for more information, or to find out if the Department will hold the public hearing.

Synopsis:

On December 14, 2012, the EPA finalized a revised NAAQS for Particulate Matter (78 FR 3086, published January 15, 2013). With this rule, the EPA strengthened the annual primary fine particulate matter (PM2.5) standard by lowering the level from 15.0 to 12.0 micrograms per cubic meter (µg/m3). Sections 110(a)(1) and (2) of the CAA require all states to submit plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Sections 110(a)(1) and (2) further require states to address basic SIP requirements, including but not limited to the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a)(1) requires states to submit SIPs within three (3) years after promulgation of a new or revised NAAQS, or December 14, 2015, in this case.

On December 12, 2013, the Department submitted a request to EPA Region 4 that the EPA designate each county in the State of South Carolina as "attainment" for the PM NAAQS. On August 19, 2014, the EPA issued a letter to SC deferring Aiken County, due to insufficient data. The EPA designated the remainder of the state unclassifiable/attainment (79 FR 51517, published August 29, 2014). On April 7, 2015, (80 FR 18535) the EPA issued a final rule designating the deferred area of Aiken County, to unclassifiable/attainment.

The Department is proposing to certify that it has addressed the aforementioned "infrastructure" elements pertaining to the PM attainment areas in South Carolina. Pending the receipt of a request for a public hearing and/or any comments received, this amendment to the SIP will take effect 30 days following publication of this Notice in the South Carolina State Register on December 11, 2015, after which, the Department will submit a final SIP certification package to the EPA for approval.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

NOTICE OF FINAL AMENDMENT TO AIR QUALITY STATE IMPLEMENTATION PLAN

Statutory Authority: The Clean Air Act, 42 U.S.C. Sections 7401 et seq.; 42 U.S.C. Sections 7407 & 7410; 40 C.F.R. Parts 51.102 and 51.241; 1976 Code Sections 48-1-10 et seq.

Synopsis:

On September 27, 1996, a Memorandum of Agreement (MOA), negotiated between the Department and the South Carolina Department of Transportation (SC DOT), was published in the *South Carolina State Register*. The purpose of the MOA was to formally incorporate the applicable provisions of the transportation conformity review process in accordance with the requirements of the Federal Clean Air Act Amendments (CAAA), as promulgated by EPA on November 24, 1993 (58 FR 62188) in 40 CFR Part 51, Subpart T, and as amended

Attachment D

South Carolina Pollution Control Act (SC Code Section 48-1-10 *et seq.*)

DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2013 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify the Legislative Services Agency at LSA@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 1.

POLLUTION CONTROL ACT

SECTION 48-1-10. Short title; definitions.

This chapter may be cited as the "Pollution Control Act" and, when used herein, unless the context otherwise requires:

(1) "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever;

(2) "Waters" means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction;

(3) "Marine district" means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State;

(4) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present and the admixture with sewage of industrial wastes or other wastes shall also be considered "sewage";

(5) "Industrial waste" means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources;

(6) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, clay, lime, cinders, ashes, offal, oil, gasoline, other petroleum products or by-products, tar, dye stuffs, acids, chemicals, dead animals, heated substances and all other products, by-products or substances not sewage or industrial waste;

(7) "Pollution" means (1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water;

(8) "Standard" or "standards" means such measure of purity or quality for any waters in relation to their reasonable and necessary use as may after hearing be established;

(9) "Department" means the Department of Health and Environmental Control;

(10) "Sewage system" or "sewerage system" means pipelines and conductors, pumping stations, force mains and all other construction, devices and appliances appurtenant thereto used for conducting sewage, industrial waste or other wastes to a point of ultimate discharge;

(11) "Treatment works" means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes;

(12) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, including sewerage systems and treatment works;

(13) "Outlet" means the terminus of a sewer system or the point of emergence of any water-borne sewage, industrial waste or other wastes, or the effluent therefrom, into the waters of the State;

(14) "Shellfish" means oysters, scallops, clams, mussels and other aquatic mollusks and lobsters, shrimp, crawfish, crabs and other aquatic crustaceans;

(15) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts which surrounds human, plant, or animal life, water or property;

(16) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural;

(17) "Source" means any and all points of origin of air contaminants whether privately or publicly owned or operated;

(18) "Undesirable level" means the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in sufficient quantity and of such characteristics and duration as to be injurious to human health or welfare, or to damage plant, animal or marine life, to property or which unreasonably interfere with enjoyment of life or use of property;

(19) "Emission" means a release into the outdoor atmosphere of air contaminants;

(20) "Environment" means the waters, ambient air, soil and/or land;

(21) "Effluent" means the discharge from a waste disposal system;

(22) "Effluent limitations" means restrictions or prohibitions of chemical, physical, biological, and other constituents which are discharged from point sources into State waters, including schedules of compliance;

(23) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel, or other floating craft, from which pollutants are or may be discharged.

HISTORY: 1962 Code Section 63-195; 1952 Code Section 70-101; 1950 (45) 2153; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-20. Declaration of public policy.

It is declared to be the public policy of the State to maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources. It is further declared that to secure these purposes and the enforcement of the provisions of this chapter, the Department of Health and Environmental Control shall have authority to abate, control and prevent pollution.

HISTORY: 1962 Code Section 63-195.1; 1952 Code Section 70-102; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-30. Promulgation of regulations; approval of alternatives.

The Department shall promulgate regulations to implement this chapter to govern the procedure of the Department with respect to meetings, hearings, filing of reports, the issuance of permits and all other matters relating to procedure. The regulations for preventing contamination of the air may not specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment. Except where the Department determines that it is not feasible to prescribe or enforce an emission standard or standard of performance, it may, by regulation, specify equipment, operational practice, or emission control method, or combination thereof. The Department may grant approval for alternate equipment, operational practice, or emission control method, or combination thereof, where the owner or operator of a source can demonstrate to the Department that such alternative is substantially equivalent to that specified.

HISTORY: 1962 Code Section 63-195.6; 1952 Code Section 70-108; 1950 (46) 2153; 1965 (54) 687; 1970 (56) 2512; 1978 Act No. 557, Section 1.

SECTION 48-1-40. Adoption of standards for water and air.

The Department, after public hearing as herein provided, shall adopt standards and determine what qualities and properties of water and air shall indicate a polluted condition and these standards shall be promulgated and made a part of the rules and regulations of the Department. The Department, in determining standards and designing the use of streams shall be guided by the provisions of this chapter.

HISTORY: 1962 Code Section 63-195.7; 1952 Code Section 70-109; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-50. Powers of department.

The Department may:

(1) Hold public hearings, compel attendance of witnesses, make findings of fact and determinations and assess such penalties as are herein prescribed;

(2) Hold hearings upon complaints or upon petitions in accordance with Section 48-1-140 or as otherwise provided in this chapter;

(3) Make, revoke or modify orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the State, or the discharge of air contaminants into the ambient air so as to create an undesirable level, resulting in pollution in excess of the applicable standards established. Such orders shall specify the conditions and time within which such discontinuance must be accomplished;

(4) Institute or cause to be instituted, in a court of competent jurisdiction, legal proceedings, including an injunction, to compel compliance with the provisions of this chapter or the determinations, permits and permit conditions and orders of the Department. An injunction granted by any court shall be issued without bond;

(5) Issue, deny, revoke, suspend or modify permits, under such conditions as it may prescribe for the discharge of sewage, industrial waste or other waste or air contaminants or for the installation or operation of disposal systems or sources or parts thereof; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing;

(6) Conduct studies, investigations and research with respect to pollution abatement, control or prevention. Such studies shall include but not be limited to, air control, sources, disposal systems and treatment of sewage, industrial waste or other wastes, by all scientific methods and, if necessary, of the use of mobile laboratories;

(7) Settle or compromise any action or cause of action for the recovery of a penalty or damages under this chapter as it may deem advantageous to the State;

(8) Cooperate with the governments of the United States or other states or State agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements;

(9) Prepare and develop a general comprehensive program for the abatement, control and prevention of air and water pollution;

(10) Require to be submitted to it and consider for approval plans for disposal systems or sources or any parts thereof and inspect the construction thereof for compliance with the approved plans;

(11) Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards;

(12) Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal

government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs;

(13) Encourage voluntary cooperation by persons, or affected groups in restoration and preservation of a reasonable degree of purity of air and water;

(14) Collect and disseminate information on air or water control;

(15) Approve projects for which applications for loans or grants under the Federal Water Pollution Control Act or the Federal Air Quality Act are made by any municipality (including any city, town, district, or other public body created by or pursuant to the laws of this State and having jurisdiction over disposal of sewage, industrial wastes or other wastes) or agency of this State or by an interstate agency;

(16) Participate through its authorized representatives in proceedings under the Federal Water Pollution Control Act or the Federal Air Quality Act to recommend measures for abatement of water pollution originating in this State;

(17) Take all action necessary or appropriate to secure to this State the benefits of the Federal Water Pollution Control Act or the Federal Air Quality Act and any and all other Federal and State acts concerning air and water pollution control;

(18) Consent on behalf of the State to request by the Federal Security Administrator to the Attorney General of the United States for the bringing of suit for abatement of such pollution;

(19) Consent to the joinder as a defendant to such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit;

(20) Conduct investigations of conditions in the air or waters of the State to determine whether or not standards are being contravened and the origin of materials which are causing the polluted condition;

(21) Establish the cause, extent and origin of damages from waste including damages to the fish, waterfowl, and other aquatic animals and public property which result from the discharge of wastes to the waters of the State;

(22) Require the owner or operator of any source or disposal system to establish and 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;

(23) Adopt emission and effluent control regulations, standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present;

(24) Enter at all times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of the environment of the State. Its authorized agents may examine and copy any records or memoranda pertaining to the operation of a disposal system or source that may be necessary to determine that the operation thereof is in compliance with the performance as specified in the application for a permit to construct; provided, however, that if such entry or inspection is denied or not consented to, and no emergency exists, the Department is empowered to and shall obtain from the magistrate from the jurisdiction in which such property, premise or place is located, a warrant to enter and inspect any such property, premise or place prior to entry and inspection. The magistrate of such jurisdiction is empowered to issue such warrants upon a proper showing of the needs for such entry and inspection. The results of any such inspection and investigation conducted by the Department shall be reduced to writing and a copy shall be furnished to the owner or operator of the source or disposal system; and

(25) Issue orders prohibiting any political entity having the authority to issue building permits from issuing such permits when the political entity has been ordered to correct a condition which has caused or is causing pollution. Provided, that no such order shall be issued until the State is capable of participating in Federal, State and local cost-sharing arrangements for municipal waste treatment facilities as set forth in the Clean Water Restoration Act of 1966.

HISTORY: 1962 Code Section 63-195.8; 1952 Code Sections 70-110, 70-111; 1950 (46) 2153; 1965 (54) 687; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1974 (58) 2334; 1975 (59) 241.

SECTION 48-1-55. Use of local personnel to monitor water quality in county where oyster factory located.

On any navigable river in this State where an oyster factory is located, the Department of Health and Environmental Control may utilize qualified personnel of the county or municipality in whose jurisdiction the factory operates to assist with the monitoring of water quality and other environmental standards the department is required to enforce. The assistance may be provided at the request of the department and upon the consent of the county or municipality concerned.

HISTORY: 2009 Act No. 22, Section 1, eff May 19, 2009.

SECTION 48-1-60. Classification and standards of quality and purity of the environment authorized after notice and hearing.

It is recognized that, due to variable factors, no single standard of quality and purity of the environment is applicable to all ambient air, land or waters of the State. In order to attain the objectives of this chapter, the Department, after proper study and after conducting a public hearing upon due notice, shall adopt rules and regulations and classification standards. The classification and the standards of quality and purity of the environment shall be adopted by the Department in relation to the public use or benefit to which such air, land or waters are or may, in the future, be put. Such classification and standards may from time to time be altered or modified by the Department.

The adoption of a classification of the waters and the standards of quality and purity of the environment shall be made by the Department only after public hearing on due notice as provided by this chapter.

HISTORY: 1962 Code Section 63-195.9; 1952 Code Section 70-112; 1950 (46) 2153; 1970 (56) 2512; 1973 (58) 788.

SECTION 48-1-70. Matters which standards for water may prescribe.

The standards for water adopted pursuant to this chapter may prescribe:

(1) The extent, if any, to which floating solids may be permitted in the water;

(2) The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water may be permitted;

(3) The extent to which organisms of the coliform group (intestinal bacilli) or any other bacteriological organisms may be permitted in the water;

(4) The extent of the oxygen which may be required in receiving waters; and

(5) Such other physical, chemical or biological properties as may be necessary for the attainment of the objectives of this chapter.

HISTORY: 1962 Code Section 63-195.10; 1952 Code Section 70-113; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-80. Considerations in formulating classification and standards for water.

In adopting the classification of waters and the standards of purity and quality, consideration shall be given to:

(1) The size, depth, surface area covered, volume, direction, rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering such water and its peculiar suitability for the particular uses and with a view to conserving it and encouraging the most appropriate use of the lands bordering on such water for residential, agricultural, industrial or recreational purposes;

(3) The uses which have been made, are being made or may be made of such waters for transportation, domestic and industrial consumption, irrigation, bathing, fishing and fish culture, fire prevention, sewage disposal or otherwise; and

(4) The extent of present defilement or fouling of such waters which has already occurred or resulted from past discharges therein.

HISTORY: 1962 Code Section 63-195.11; 1952 Code Section 70-114; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-83. Dissolved oxygen concentration depression; procedures to obtain site-specific effluent limit.

(A) The department shall not allow a depression in dissolved oxygen concentration greater than 0.1 mg/l in a naturally low dissolved oxygen waterbody unless the requirements of this section are all satisfied by demonstrating that resident aquatic species shall not be adversely affected. The provisions of this section apply in addition to any standards for a dissolved oxygen depression in a naturally low dissolved oxygen waterbody promulgated by the department by regulation.

(B) A party seeking a site-specific effluent limit related to dissolved oxygen pursuant to this section must notify the department in writing of its intent to obtain the depression. Upon receipt of the written notice of this intent, the department shall within thirty days publish a public notice indicating the party seeking the dissolved oxygen depression and the specific site for which the dissolved oxygen depression is sought in addition to the department's usual public notice procedures. The notice shall be in the form of an advertisement in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area. If within thirty days of the publication of the public notice the department receives a request to hold a public hearing from at least twenty citizens or residents of the county or counties affected, the department shall conduct such a hearing. The hearing must be conducted at an appropriate location near the specific site for which the dissolved oxygen depression is sought and must be held within ninety days of the publication of the initial public notice by the department.

(C) The department, in consultation with the Department of Natural Resources and the Environmental Protection Agency, shall provide a general methodology to be used for consideration of a site-specific effluent limit related to dissolved oxygen.

(D) The party seeking a site-specific effluent limit related to dissolved oxygen must conduct a study:

(1) to determine natural dissolved oxygen conditions at the specific site for which the depression is sought. The study must use an appropriate reference site. The reference site is not restricted to the State but must have similar geography, environmental setting, and climatic conditions. However, if an appropriate reference site cannot be located, the party may use a site-specific dynamic water quality model or, if available, a site-specific multidimensional dynamic water quality model.

(2) to assess the ability of aquatic resources at the specific site for which the dissolved oxygen depression is sought to tolerate the proposed dissolved oxygen depression.

(E) The department shall provide the following agencies sixty days in which to review and provide comments on the design of the scientific study required in subsection (D):

(1) the United States Fish & Wildlife Service of the United States Department of the Interior;

(2) the United States Geological Survey of the United States Department of the Interior;

(3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce; and

(4) The Department of Natural Resources.

The department and the Department of Natural Resources shall select and convene a science peer review committee to review the design of the study as required by subsection (D). The department and the

Environmental Protection Agency must concur on the final design before a study is initiated. Justification of any objection to the study design must be based solely on scientific considerations. Objections to the study design must be provided in writing by the department to the party seeking a site-specific effluent limit related to dissolved oxygen.

(F) The department shall provide the following agencies sixty days to review and comment on the results of the studies required in subsection (D):

(1) the United States Fish and Wildlife Service of the United States Department of the Interior;

(2) the United States Geological Survey of the United States Department of the Interior; and

(3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce.

In order for a site-specific effluent limit related to dissolved oxygen to be implemented pursuant to this section, the department, the Department of Natural Resources and the Environmental Protection Agency must concur that the results of the study required in subsection (D) justify its implementation. In reaching a decision on the study results, the department and the Department of Natural Resources must base their decision upon the entire record, taking into account whatever in the record detracts from the weight of the decision, and must be supported by evidence that a reasonable mind might accept as adequate to support the decision. Objections to the acceptance of the results of the study must be provided in writing by the department to the party seeking a site-specific effluent limit related to dissolved oxygen.

HISTORY: 1999 Act No. 106, Section 1; 2010 Act No. 134, Section 1, eff March 30, 2010.

SECTION 48-1-85. Requirements for houseboats with marine toilets.

(A) It is unlawful for a person to operate or float a houseboat on the waters of this State unless it has a marine toilet that discharges only into a holding tank.

(B) As used in this section:

(1) "Holding tank" means a container designed to receive and hold sewage and other wastes discharged from a marine toilet and constructed and installed in a manner so that it may be emptied only by pumping out its contents.

(2) "Houseboat" means watercraft primarily used as habitation and not used primarily as a means of transportation.

(3) "Marine toilet" includes equipment for installation on board a houseboat designed to receive, retain, treat, or discharge sewage. A marine toilet must be equipped with a holding tank.

(C) When an owner of a houseboat having a marine toilet applies to the Department of Natural Resources for a certificate of title pursuant to Section 50-23-20, he shall certify in the application that the toilet discharges only into a holding tank.

(D) Houseboat holding tanks may be emptied only by a pump-out system permitted by the South Carolina Department of Health and Environmental Control.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars for each day's violation or imprisoned not more than thirty days, or both.

HISTORY: 1992 Act No. 334, Section 1; 1993 Act No. 181, Section 1172; 2007 Act No. 33, Section 2, eff upon approval (became law without the Governor's signature on May 24, 2007).

SECTION 48-1-87. Aquatic Life Protection Act.

(A) In order to provide for the survival and propagation of a balanced community of aquatic flora and fauna as set forth in Regulation 61-68 in a manner consistent with Section 48-1-20, the department shall, where necessary to protect aquatic life, impose NPDES permit limitations for whole effluent toxicity (WET) based on the mixing zone authorized in subsection (C), where the department determines that a

discharge causes or has the reasonable potential to cause or contribute to an excursion of a water quality criterion in Regulation 61-68, other than numeric criteria for specific pollutants, that apply to the protection of aquatic organisms.

(B) As directed by this section, the department may promulgate regulations to implement WET tests that calibrate EPA's standard toxicity testing species and methods to the natural water chemistry representative of the lakes, streams, groundwater, and stormwater runoff of this State. In developing these regulations the department may use the findings of any scientifically defensible study it may conduct and may use other pertinent peer reviewed studies or conclusions. In the interim, this section shall not be construed to limit the department's authority to impose WET limits.

(C) For purposes of performing WET reasonable potential determinations for a specific discharge and, where justified, setting WET permit limitations for that discharge, the department, notwithstanding any other provision of law shall:

(1) develop procedures to allow up to one hundred percent dilution in waterbodies, based on the 7Q10 flow as defined by Regulation 61-68, where justified by the permittee or permit applicant and approved by the department;

(2) use stream flow conditions other than those described in item (1) where justified by hydrological controls that are capable of ensuring critical flow conditions higher than the respective ten-year flows identified in item (1), to evaluate acute and chronic exposure;

(3) use, for stormwater discharges, a representative flow greater than 7Q10 flow, as demonstrated on a site-specific basis, with any resulting WET permit limitations comprising only those expressed in terms of acute survival endpoints;

(4) consider such mixing calculations as described in items (1), (2), and (3) to be consistent with its policy set forth in Regulation 61-68 for minimizing mixing zones;

(5) give consideration to compliance with numeric criteria and actual instream biological conditions, in the absence of a valid scientific correlation between sublethal WET test results and the biological integrity of representative lakes, streams, and estuaries in this State, wherein biological integrity includes the richness, abundance, and balanced community structure of indigenous aquatic organisms;

(6) allow, at the request of the permittee, the use of ambient receiving waters as control and dilution waters in WET tests;

(7) exempt once-through, noncontact cooling water, which contains no additives, from toxicity requirements; and

(8) allow dischargers to use WET testing protocols that utilize alternative species in accordance with applicable EPA regulations and guidance.

(D) No part of this section shall be construed to limit the department's authority to adopt water quality criteria, to impose permit limits for specific chemical pollutants, to obligate the department to revalidate existing water quality criteria, or to establish additional water quality criteria for specific chemical pollutants. The department, whenever appropriate, shall utilize the flexibility of interpretation concerning WET testing and the use of WET test results provided by EPA.

(E) For the purpose of implementing Section 48-1-20 and Regulation 61-68:

(1) "propagation" is defined in Regulation 61-68;

(2) "biological integrity" means a measure of the health of an aquatic or marine ecosystem using the richness and abundance of species as the primary indicator, and "biological integrity" is a key component of an "instream bioassessment";

(3) "sublethal toxicity tests" means laboratory experiments that measure the nonlethal biological effects, including, but not limited to, growth or reproduction, of effluents or receiving waters on aquatic organisms;

(4) "calibrate" means a process to establish the baseline control condition based on the normal range of biological responses likely to occur when standard test organisms are exposed to various nontoxic waters sampled from streams and lakes throughout the State.

(F) For any NPDES permit that was taken over by EPA due to provisions of Act 258 of 2004 from July 1, 2004, through the effective date of this subsection as revised by the provisions of this 2005 act, the

department shall convey to EPA, through the certification process (40 C.F.R. Part 124.53), any additional requirements mandated under state law. Moreover, notwithstanding any other provision of law or regulation, the requirement for a counterpart state permit for any such discharge is waived. Alternatively, at the request of the permittee, the department may waive the certification process and issue a state permit. However, affected permittees shall submit applications for reissuance to the department in accordance with Regulation 61-9, at least one hundred eighty days in advance of the expiration of the federal permits. At the discretion of the department, the annual fees for NPDES permits in Regulation 61-30 may continue to be charged, when certifying a federal permit, if the department waives the certification fee.

(G) The department shall reduce or eliminate WET monitoring requirements, as appropriate, in accordance with permit modification processes contained in Regulation 61-9, where dischargers demonstrate that their effluents do not demonstrate reasonable potential.

HISTORY: 2004 Act No. 258, Section 2; 2005 Act No. 25, Section 1.

SECTION 48-1-90. Causing or permitting pollution of environment prohibited; remedies.

(A)(1) It is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by the department.

(2) The permit requirements of subsection (A)(1), Section 48-1-100, and Section 48-1-110 do not apply to:

(a) discharges in a quantity below applicable threshold permitting requirements established by the department;

(b) discharges for which the department has no regulatory permitting program;

(c) discharges exempted by the department from permitting requirements; or

(d) normal farming, silviculture, aquaculture, ranching, and wildlife habitat management activities that are not prohibited by or otherwise subject to regulation.

(3) Subsection (A)(2) must not be construed to:

(a) impair or affect common law rights;

(b) repeal prohibitions or requirements of other statutory law or common law; or

(c) diminish the department's authority to abate public nuisances or hazards to public health or the environment, to abate pollution as defined in Section 48-1-10(7), or to respond to accidental discharges or spills.

(4) A person must first petition the department in writing for a declaratory ruling as to the applicability of a specific, existing regulatory program to a proposed or existing discharge into the environment, provided that the proposed or existing discharge is not exempt or excluded from permitting as is set forth in subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must, within sixty days after receipt of such petition, issue a declaratory ruling as to the applicability of such program to such discharge. If the department determines a permit is required under such program and that no exception or exclusion exists, including, but not limited to, the exceptions set forth in subsection (A)(2), the department must issue a declaration requiring the submission of an application to permit such discharge pursuant to the applicable permitting program. If the department further determines that immediate action is necessary to protect the public health or property due to such unpermitted discharge, the department may further declare the existence of an emergency and order such action as the department deems necessary to address the emergency. Any person to whom such emergency order is directed may apply directly to the Administrative Law Court for relief and must be afforded a hearing within forty-eight hours. Regardless of whether a hearing is held, the department must revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court.

Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.

(B)(1) A person who discharges organic or inorganic matter into the waters of this State as described in subsection (A) to the extent that the fish, shellfish, aquatic animals, wildlife, or plant life indigenous to or dependent upon the receiving waters or property is damaged or destroyed is liable to the State for the damages. The action must be brought by the State in its own name or in the name of the department.

(2) The amount of a judgment for damages recovered by the State, less costs, must be remitted to the agency, commission, department, or political subdivision of the State that has jurisdiction over the fish, shellfish, aquatic animals, wildlife, or plant life or property damaged or destroyed.

(3) The civil remedy provided in subsection (B)(2) is not exclusive, and an agency, commission, department, or political subdivision of the State with appropriate authority may undertake in its own name an action to recover damages independent of this subsection.

HISTORY: 1962 Code Section 63-195.12; 1952 Code Section 70-116; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1975 (59) 241; 2012 Act No. 198, Section 1, eff June 6, 2012.

SECTION 48-1-95. Wastewater utilities; procedures for significant spills.

(A) As used in this section:

(1) "Action plan" or "plan" means a schedule for implementing and completing repairs, upgrades, and improvements needed to minimize future repetitive significant spills of untreated or partially treated domestic sewage.

(2) "Capacity, Management, Operation, and Maintenance or 'CMOM' plan" means a comprehensive, dynamic framework for wastewater utilities to identify and incorporate widely accepted wastewater industry practices to:

(a) better manage, operate, and maintain collection systems;

(b) investigate capacity constrained areas of the collection system; and

(c) respond to sanitary sewer overflow events.

(3) "Comprehensive review" or "review" means a complete technical assessment of the components and operation of a sewage system or its treatment works that are contributing to, or may be contributing to, repetitive significant spills of untreated or partially treated domestic sewage.

(4) "Department" means the Department of Health and Environmental Control.

(5) "Significant spill" means a net discharge from a wastewater utility of at least five thousand gallons of untreated or partially treated domestic sewage that could cause a serious adverse impact on the environment or public health. "Significant spill" does not include spills caused by a natural disaster, direct act of a third party, or other act of God.

(6) "Wastewater utility" or "utility" means the operator or owner of a sewage collection system or its treatment works providing sewer service to the public. "Wastewater utility" does not include manufacturers, electric utilities, agricultural operations, and wastewater treatment systems located on property owned by the federal government.

(B) Utilities must verbally notify the department of any significant spill within twenty-four hours and by written submission within five days.

(C) Upon receiving notice of a significant spill from a wastewater utility, the department must determine whether the responsible wastewater utility has had more than two significant spills per one hundred miles of its sewage collection system, in the aggregate and excluding private service laterals, during the twelve-month period up to and including the date of the significant spill.

(D)(1) If the wastewater utility has had more than two significant spills per one hundred miles of its aggregate collection system miles during a twelve-month period, the department shall issue an order directing the utility to complete a comprehensive review of the sewage system and treatment works facility identified pursuant to subsection (C), or if the wastewater utility has a Capacity, Management,

Operations, and Maintenance plan in place directing the utility to update this plan, the order must include, but is not limited to:

(a) the submission of the findings of the comprehensive review or CMOM update; and

(b) the required implementation of any plans to minimize the recurrence of such significant spills.

(2) The comprehensive review, pursuant to item (1), must be performed by a licensed South Carolina professional engineer.

(3) Unless the department's order is being appealed, the comprehensive review or CMOM update must be initiated by the wastewater utility's owner within two months of receiving an order from the department or, in the case of an appeal, within two months from the date the order becomes final and nonappealable.

(E) The department shall require that all wastewater utilities provide public notice of any significant spill of five thousand gallons or more within twenty-four hours of the discovery. Where the responsible wastewater utility does not provide this notice, in addition to any enforcement response, the department shall provide public notice of the significant spill.

(F) Nothing in this section contravenes the department's ability to undertake enforcement action under the Pollution Control Act, Chapter 1, Title 48, or any other state or federal law.

HISTORY: 2012 Act No. 109, Section 1, eff February 1, 2012.

SECTION 48-1-100. Permits for discharge of wastes or air contaminants; jurisdiction of department.

(A) A person affected by the provisions of this chapter or the rules and regulations adopted by the department desiring to make a new outlet or source, or to increase the quantity of discharge from existing outlets or sources, for the discharge of sewage, industrial waste or other wastes, or the effluent therefrom, or air contaminants, into the waters or ambient air of the State, first shall make an application to the department for a permit to construct and a permit to discharge from the outlet or source. If, after appropriate public comment procedures, as defined by department regulations, the department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant. The department, if sufficient hydrologic and environmental information is not available for it to make a determination of the effect of the discharge, may require the person proposing to make the discharge to conduct studies that will enable the department to determine that its quality standards will not be violated.

(B) The Department of Health and Environmental Control is the agency of state government having jurisdiction over the quality of the air and waters of the State of South Carolina. It shall develop and enforce standards as may be necessary governing emissions or discharges into the air, streams, lakes, or coastal waters of the State, including waste water discharges.

(C) The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately-owned systems for the disposal of offal and human or animal wastes.

HISTORY: 1962 Code Section 63-195.13; 1952 Code Section 70-117; 1950 (46) 2153; 1964 (53) 2393; 1970 (56) 2512; 1971 (57) 709; 1973 (58) 788; 1992 Act No. 294, Section 1.

SECTION 48-1-110. Permits required for construction or alteration of disposal systems; classification; unlawful operations or discharges.

(a) It shall be unlawful for any person, until plans therefor have been submitted to and approved by the department and a written permit therefor shall have been granted to:

(1) Construct or install a disposal system or source;

(2) Make any change in, addition to or extension of any existing disposal system or part thereof that would materially alter the method or the effect of treating or disposing of the sewage, industrial waste or other wastes;

(3) Operate such new disposal systems or new source, or any existing disposal system or source;

(4) Increase the load through existing outlets of sewage, industrial waste or other wastes into the waters of the State.

(b) The director of Health and Environmental Control shall classify all public wastewater treatment plants, giving due regard to size, types of work, character, and volume of waste to be treated, and the use and nature of the water resources receiving the plant effluent. Plants may be classified in a group higher than indicated at the discretion of the classifying officer by reason of the incorporation in the plant of complex features which cause the plant to be more difficult to operate than usual or by reason of a waste unusually difficult to treat, or by reason of conditions of flow or use of the receiving waters requiring an unusually high degree of plant operation control or for combinations of such conditions or circumstances. The classification is based on the following groups:

(1) For biological wastewater treatment plants: Group I-B. All wastewater treatment plants which include one or more of the following units: primary settling, chlorination, sludge removal, imhoff tanks, sand filters, sludge drying beds, land spraying, grinding, screening, oxidation, and stabilization ponds. Group II-B. All wastewater treatment plants which include one or more of the units listed in Group I-B and, in addition, one or more of the following units: sludge digestion, aerated lagoon, and sludge thickeners. Group III-B. All wastewater treatment plants which include one or more of the units listed in Groups I-B and II-B and, in addition, one or more of the following: trickling filters, secondary settling, chemical treatment, vacuum filters, sludge elutriation, sludge incinerator, wet oxidation process, contact aeration, and activated sludge (either conventional, modified, or high rate processes). Group IV-B. All wastewater treatment plants which include one or more of the units listed in Groups I-B, II-B, and III-B and, in addition, treat waste having a raw five-day biochemical oxygen demand of five thousand pounds a day or more.

(2) Effective July 1, 1987, for physical-chemical wastewater treatment plants: Group I-P/C. All wastewater treatment plants which include one or more of the following units: primary settling, equalization, pH control, and oil skimming. Group II-P/C. All wastewater treatment plants which include one or more of the units listed in Group I-P/C and, in addition, one or more of the following units: sludge storage, dissolved air flotation, and clarification. Group III-P/C. All wastewater treatment plants which include one or more of the units listed in Groups I-P/C and II-P/C and, in addition, one or more of the following: oxidation/reduction reactions, cyanide destruction, metals precipitation, sludge dewatering, and air stripping. Group IV-P/C. All wastewater treatment plants which include one or more of the units listed in Groups I-P/C, II-P/C, and III-P/C and, in addition, one or more of the following: membrane technology, ion exchange, tertiary chemicals, and electrochemistry.

(c) It shall be unlawful for any person or municipal corporation to operate a public wastewater treatment plant unless the operator-in-charge holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the public wastewater treatment plant supervised by him, except as hereinafter provided.

(d) It shall be unlawful for any person to operate an approved waste disposal facility in violation of the conditions of the permit to construct or the permit to discharge.

(e) It shall be unlawful for any person, directly or indirectly, negligently or willfully, to discharge any air contaminant or other substance in the ambient air that shall cause an undesirable level.

HISTORY: 1962 Code Section 63-195.14; 1952 Code Section 70-118; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1974 (58) 2334; 1980 Act No. 319, Section 4; 1985 Act No. 172, Section 1; 1993 Act No. 181, Section 1173.

SECTION 48-1-115. Public notice of sludge storage facility construction permit.

The department shall provide public notice before issuing a construction permit pursuant to Regulation 61-67 for a facility that stores sludge or other residuals, or any combination of these, that is not located at the site of a wastewater or sludge treatment facility permitted pursuant to Regulation 61-67. Public notice must be provided in accordance with Regulation 61-9.

HISTORY: 2006 Act No. 329, Section 1.

SECTION 48-1-120. Determination and correction of undesirable level.

If the Department shall determine that an undesirable level exists, it shall take such action as necessary to control such condition.

The Department shall grant such time as is reasonable for the owner or operator of a source to correct the undesirable level, after taking all factors into consideration that are pertinent to the issue.

In making its order and determinations, the Department shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

(a) The character and degree of injury to, or interference with, the health and physical property of the people;

(b) The social and economic value of the source of the undesirable levels;

(c) The question of priority of location in the area involved; and

(d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.

If the undesirable level is not corrected within the required time, then the Department shall issue an order to cease and desist from causing such emissions.

HISTORY: 1962 Code Section 63-195.15; 1965 (54) 687; 1970 (56) 2512.

SECTION 48-1-130. Order for discontinuance of discharge of wastes or air contaminants.

A person discharging sewage, industrial waste, or other waste or air contaminant into the environment of the State, in such manner or quantity as to cause pollution, without regard to the time that the discharge began or whether or not the continued discharge has been by virtue of a permit issued by the department, shall discontinue the discharge upon receipt of an order of the department. An order is subject to review pursuant to Section 44-1-60 and the Administrative Procedures Act. This section does not abrogate any of the department's emergency powers.

HISTORY: 1962 Code Section 63-195.16; 1952 Code Section 70-120; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 2, eff June 6, 2012.

SECTION 48-1-140. Revision or modification of national pollutant discharge elimination system or final compliance date for stationary source or class or sources of air pollution.

(a) The Department may, after notice and opportunity for a public hearing, revise or modify a national pollutant discharge elimination system permit in accordance with the procedures and criteria set out in Sections 301(c), 302 and 316(a) of the Federal Water Pollution Control Act Amendments of 1972.

(b) The Department may, after notice and opportunity for a public hearing, revise or modify a final compliance date for any stationary source or class or sources of air pollution whether contained in regulations or a compliance order, if the Department determines that

(1) good faith efforts have been made to comply with such requirement before such date;

(2) such source (or class) is unable to comply with such requirement 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;

(3) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health;

(4) the continued operation of such source is essential to national security or to the public health or welfare.

Provided, however, that where the compliance date is one prescribed in the State Implementation Plan, the findings and recommendations of the Department shall be submitted to the Governor for transmittal to the Administrator of the Federal Environmental Protection Agency or his designated representative for his concurrence or rejection. Rejection by the administrator may constitute grounds for rejection of a request for modification or revisions of such compliance requirement.

(c) Any determination under items (a) or (b) of this section shall (1) be made on the record after notice to interested persons and opportunity for hearing, (2) be based upon a fair evaluation of the entire record at such hearing, and (3) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

HISTORY: 1962 Code Section 63-195.17; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 1978 Act No. 463.

SECTION 48-1-150. Situations in which public hearing is required or authorized.

Public hearings shall be conducted by the Department prior to action by the Department in the classification of the waters or the adoption of standards of purity and quality thereof as provided by this chapter. The Department may conduct public hearings prior to action in the following cases, either of its own volition or upon the request of affected persons, (a) an order of determination of the Department requiring the discontinuance of discharge of sewage, industrial waste or other wastes into the waters of the State or air contaminant into the ambient air, (b) an order issuing, denying, revoking, suspending or modifying a permit, (c) a determination that a discharge constitutes pollution of waters of a marine district and (d) any other proceeding resulting in a finding of fact or determination that a discharge of air contaminants into the ambient air or sewage, industrial waste or other wastes into the waters of the State contravenes the standards established for such air and waters.

HISTORY: 1962 Code Section 63-195.18; 1952 Code, Section 70-125; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-160. Conduct of hearing; decision of department.

The hearings herein provided for may be conducted by the Department at a regular or special meeting or it may delegate to any member, to the executive director or to any employee or agent of the Department, the authority to conduct such hearings in the name of the Department at any time and place. But the Department shall make all necessary decisions as to the matter under consideration. Such decision may be based solely upon the record of any hearing conducted by the Department or by its duly authorized representative.

HISTORY: 1962 Code Section 63-195.19; 1952 Code Section 70-126; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-170. Records of hearings and decisions.

In any hearing held by the Department in which a quasi-judicial decision is rendered, the Department shall make a record of the decision and secure its prompt publication. The decision shall include a statement of the facts in controversy, the decision of the Department, the law or regulation upon which the decision is based and any other information deemed necessary.

To serve as a guide and precedent of the policy of the Department, the decisions shall be chronologically numbered according to date and compiled in an annual report similar in style to the reports of the Supreme Court. The reports of these decisions shall be made available to the public.

If any person concerned with such hearing requests it, a complete transcript of the testimony presented shall be made and filed.

HISTORY: 1962 Code Section 63-195.20; 1952 Code Section 70-127; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-180. Oaths; examination of witnesses; subpoenas.

In any such hearing, any member of the Department, the executive director or any employee or agent thereof authorized by the Department may administer oaths, examine witnesses and issue in the name of the Department notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. Witnesses shall receive the same fees and mileage as in civil actions.

HISTORY: 1962 Code Section 63-195.21; 1952 Code Section 70-128; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-190. Refusal to obey notice of hearing or subpoena.

In case of refusal to obey a notice of hearing or subpoena, the court of common pleas shall have jurisdiction, upon application of the Department, to issue an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

HISTORY: 1962 Code Section 63-195.22; 1952 Code Section 70-129; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-200. Appeals.

Any person may appeal from any order of the Department within thirty days after the filing of the order, to the court of common pleas of any county in which the pollution occurs. The Department shall thereupon certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the order, on the merits, and render judgment thereon as in ordinary appeals in equity. The court may order or permit further testimony on the merits of the case, in its discretion such testimony to be given either before the judge or referee by him appointed. From such judgment of the court an appeal may be taken as in other civil actions.

HISTORY: 1962 Code Section 63-195.23; 1952 Code Section 70-131; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-210. Duties of Attorney General and solicitors.

The Attorney General shall be the legal adviser of the Department and shall upon request of the Department institute injunction proceedings or any other court action to accomplish the purpose of this chapter. In the prosecution of any criminal action by the Attorney General and in any proceeding before a grand jury in connection therewith the Attorney General may exercise all the powers and perform all the duties which the solicitor would otherwise be authorized or required to exercise or perform and in such a

proceeding the solicitor shall exercise such powers and perform such duties as are requested of him by the Attorney General.

HISTORY: 1962 Code Section 63-195.24; 1952 Code Section 70-132; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-220. Institution of prosecutions.

Prosecutions for the violation of a final determination or order shall be instituted only by the Department or as otherwise provided for in this chapter.

HISTORY: 1962 Code Section 63-195.25; 1952 Code Sections 70-134, 70-135; 1950 (46) 2153; 1970 (56) 2512; 1975 (59) 241.

SECTION 48-1-230. Disposition of funds.

Any funds appropriated to or received by the Department shall be deposited in the State Treasury as provided by law. Such funds shall be paid out on warrants issued by the State as prescribed by law, but only on order of the authorized representatives of the Department and in accordance with an annual budget or amendments thereto approved by the Department at an official meeting, such order being the authority of the proper fiscal officials of the State for making payment.

HISTORY: 1962 Code Section 63-195.26; 1952 Code Section 70-136; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-240. Chapter remedies are cumulative; estoppel.

It is the purpose of this chapter to provide additional and cumulative remedies to abate the pollution of the air and waters of the State and nothing herein contained shall abridge or alter rights of action in the civil courts or remedies existing in equity or under the common law or statutory law, nor shall any provision in this chapter or any act done by virtue of this chapter be construed as estopping the State, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights under the common law, statutory law or in equity to suppress nuisances or to abate any pollution.

HISTORY: 1962 Code Section 63-195.27; 1952 Code Section 70-137; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-250. No private cause of action created.

No private cause of action is created by or exists pursuant to this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.

HISTORY: 1962 Code Section 63-195.28; 1952 Code Section 70-138; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 3, eff June 6, 2012.

SECTION 48-1-260. Conditions within industrial plants and employer-employee relations not affected.

Nothing contained in this chapter shall be deemed to grant to the Department any authority to make any rule, regulation or determination or to enter any order with respect to air conditions existing solely within

the industrial boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air pollution within such boundaries.

HISTORY: 1962 Code Section 63-195.29; 1965 (54) 687; 1970 (56) 2512.

SECTION 48-1-270. Availability of records, reports, and information to the public; confidentiality of trade secrets.

Any records, reports or information obtained under any provision of this chapter shall be available to the public. Upon a showing satisfactory to the Department by any person that records, reports or information, or particular parts thereof, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Department shall consider such record, report or information or particular portion thereof confidential in the administration of this chapter.

HISTORY: 1962 Code Section 63-195.30; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-280. Health laws not affected.

Nothing herein contained shall be construed to postpone, stay or abrogate the enforcement of the provisions of the public health laws of this State and rules and regulations promulgated hereunder in respect to discharges causing actual or potential hazards to public health nor to prevent the Department of Health and Environmental Control from exercising its right to prevent or abate nuisances.

HISTORY: 1962 Code Section 63-195.31; 1952 Code Section 70-139; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-290. Emergency orders.

Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the Department or by direction of the Governor shall be afforded a hearing within forty-eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists.

HISTORY: 1962 Code Section 63-195.32; 1970 (56) 2512; 1975 (59) 241.

SECTION 48-1-300. Certain violations excused.

The civil and criminal liabilities herein imposed upon persons violating the provisions hereof shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence on the part of such person was not the proximate cause.

HISTORY: 1962 Code Section 63-195.33; 1952 Code Section 70-122; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-310. Local air pollution control programs.

The governing body of any county is hereby authorized to establish, administer and enforce a local air pollution control program, subject to the approval of the Department. Such programs shall be formulated in accordance with standards and procedures adopted by the Department, and shall be subject to periodic review by the Department, which shall have the power to invalidate such programs if found to be unsatisfactory. County pollution control authorities, when constituted under this section, are hereby authorized to exercise in the geographic area involved all of the powers specified in this chapter, including the authority to adopt rules, regulations and procedures for the control of air pollution.

HISTORY: 1962 Code Section 63-195.34; 1970 (56) 2512.

SECTION 48-1-320. Penalties for violation of Pollution Control Act.

A person who wilfully or with gross negligence or recklessness violates a provision of this chapter or a regulation, permit, permit condition, or final determination or order of the department is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than twenty-five thousand dollars for each day's violation or be imprisoned for not more than two years, or both.

HISTORY: 1962 Code Section 63-195.35; 1952 Code Section 70-133; 1950 (46) 2153; 1964 (53) 2393; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 2001 Act No. 95, Section 1.

SECTION 48-1-330. Civil penalties.

Any person violating any of the provisions of this chapter, or any rule or regulation, permit or permit condition, final determination or order of the Department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.

HISTORY: 1962 Code Section 63-195.35:1; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-340. False statements, representations or certifications; falsifying, tampering with, or rendering inaccurate monitoring devices or methods.

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be subject to the civil or criminal provisions contained in this chapter. For the purposes of this section the term "person" shall mean, in addition to the definition contained in Section 48-1-10, any responsible corporate officer.

HISTORY: 1975 (59) 241.

SECTION 48-1-350. Penalties constitute debts to State; liens; disposition of moneys collected.

All penalties assessed under this chapter are held as a debt payable to the State by the person against whom they have been charged and constitute a lien against the property of the person. One-half of the civil penalties collected inure to the benefit of the county. The criminal penalties collected pursuant to Section 48-1-320 must be collected and distributed pursuant to Section 14-1-205.

HISTORY: 1962 Code Section 63-195.36; 1970 (56) 2512; 1994 Act No. 497, Part II, Section 36O.