



Mark R. Elam, Chairman
Jim P. Creel, Jr., Vice-Chairman
Charles M. Joye, II, P.E., Secretary
J.B. (Sonny) Kinney

Board:
Seema Shrivastava-Patel
Richard V. Lee, Jr.
Alex A. Singleton

Minutes of the September 12, 2019, meeting of the South Carolina Board of Health and Environmental Control

The South Carolina Board of Health and Environmental Control met on Thursday, September 12, 2019, at 10:00 a.m. in the Boardroom (#3420) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Mark Elam, Chairman
J.B. (Sonny) Kinney, 1st District
Seema Shrivastava-Patel, 2nd District
Charles M. Joye, II, P.E., 3rd District
Richard V. Lee, Jr., 5th District
Alex A. Singleton, 6th District
Jim Creel, Jr., 7th District

4th Congressional District seat is currently vacant.

Also, in attendance were Richard K. Toomey, Director; W. Marshall Taylor, Jr., Legal Counsel; M. Denise Crawford, Clerk; Department staff, and members of the public.

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

Item 1: Minutes of July 11, 2019 meeting (Attachment 1-1)

Mr. Kinney moved, seconded by Mr. Creel, to approve the minutes as presented. The Board voted and Motion carried.

Item 2: Administrative and Consent Orders issued by Health Regulation (Attachment 2-1)

Ms. Bentley White, Director, Health Regulation Policy and Communications, stated for this reporting period fourteen (14) Consent Orders and two (2) Administrative Orders had been issued with assessed penalties totaling \$61,600.00.

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

Item 3: Administrative Orders and Consent Orders issued by Environmental Affairs (Attachment 4-1)

Ms. Rebecca Sproles, Liaison, Environmental Affairs, stated that for this reporting period one hundred and twenty (120) Consent Orders with assessed civil penalties totaling \$127,300.00

and four (4) Administrative Orders with assessed civil penalties totaling \$4,500.00 have been issued.

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

Item 4: Notice of Proposed Regulation Amending R.30-1, Statement of Policy, and R.30-14, Administrative Procedures, South Carolina Coastal Zone Management Act
(Attachment 4-1)

Ms. Elizabeth vonKolnitz, Chief, Office of Ocean and Coastal Resource Management, presented this item to the Board.

The Office of Ocean and Coastal Resource Management proposed the Notice of Proposed Regulation amending R.30-1, Statement of Policy, and R.30-14, Administrative Procedures, for publication in the September 27, 2019, *South Carolina State Register* ("State Register"). Legal authority resides in S.C. Code Sections 48-39-50 and 48-39-280, which require the Department to establish and review the position of the state's beachfront jurisdictional baselines and setback lines every seven (7) to ten (10) years. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Department proposed amending R.30-1.D.(43) and R.30-14.E., F., and G. to incorporate state statutory changes. S.C. Code Section 48-39-280 requires the Department to establish the position of the baselines and setback lines during establishment cycles that are not less than every seven (7) years, but not more than every ten (10) years following a previous establishment cycle and must be based upon the best available data. The purpose of these jurisdictional lines is to delineate the extent of the Department's direct permitting authority for activities within the defined beaches and beach/dune system critical areas.

Act 173 of 2018, the Beachfront Management Reform Act, establishes the position of the jurisdictional baselines and setback lines for the 2018 establishment cycle. Act 173 includes a section that requires the Department to promulgate regulations in order to implement provisions of the Act, including regulations that the Department will use to locate a primary oceanfront sand dune.

The Department convened a Beachfront Jurisdictional Line Stakeholder Workgroup (Workgroup) in 2018 to provide input into this process. The Workgroup was comprised of thirteen (13) members representing local governments and community associations, the real estate community, academic institutions, private-sector consultants, and non-profit organizations. The Workgroup was charged with providing recommendations to the Department for implementing future jurisdictional line review processes. The proposed amendments are based on final recommendations of the Workgroup and associated public input.

The Department had a Notice of Drafting published in the April 26, 2019, *State Register*. The Department received no public comments during the Notice of Drafting comment period.

The Department conducted three (3) informational forums to provide the public with the opportunity to discuss the process and outcomes of the Beachfront Jurisdictional Line Stakeholder Workgroup. Forums were held in Myrtle Beach, Charleston and Hardeeville/Bluffton on July 10, 11, and 18, 2019, respectively.

Appropriate Department staff conducted an internal review of the proposed amendments on August 16, 2019.

The Office of Ocean and Coastal Resource Management respectfully requested the Board grant approval of the Notice of Proposed Regulation for publication in the September 27, 2019, *State Register*.

After discussion, **Mr. Creel moved, seconded by Mr. Singleton, to grant approval to publish the Notice of Proposed Regulation amending Regulation 30-1, Statement of Policy, and Regulation 30-14, Administrative Procedures, South Carolina Coastal Zone Management Act, in the *State Register*, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 5: Notice of Proposed Regulation Amending R.61-32, Soft Drink and Water Bottling Plants, and Repealing R.61-54, Wholesale Commercial Ice Manufacturing (Attachment 5-1)

Mr. Sandra Craig, Director, Division of Food and Lead Risk Assessments, presented this item to the Board.

The Bureau of Environmental Health Services (Bureau) proposed the Notice of Proposed Regulation amending R.61-32, *Soft Drink and Water Bottling Plants*. The Bureau further proposed revising the requirements of R.61-54, *Wholesale Commercial Ice Manufacturing*, and merging it into R.61-32, *Soft Drink and Water Bottling Plants*. This entails repealing R.61-54, *Wholesale Commercial Ice Manufacturing* and adding its amended requirements to R.61-32, *Soft Drink and Water Bottling Plants*. The Bureau presented this proposal for publication in the September 27, 2019, *South Carolina State Register (State Register)*. Legal authority resides in 1976 Code Sections 44-1-140 and 44-1-150, which enables the Department of Health and Environmental Control (Department) to promulgate regulations for the operation of bottling plants and similar businesses. Furthermore, Section 44-1-150 allows for the enforcement of orders related to violations of these regulations. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments and repeal. R.61-32 was last amended in 2004 and R.61-54 was last amended in 2008.

The purpose of R.61-32, *Soft Drink and Water Bottling Plants*, and R.61-54, *Wholesale Commercial Ice Manufacturing*, is to safeguard public health and provide consumers safe, unadulterated soft drinks, bottled water, and wholesale ice products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of soft drinks, bottled water, and wholesale ice products. The current regulations are based on Title 21, *Food and Drugs*, Part 110 *Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food* of the Code of Federal Regulations (CFR) (21 CFR Part 110), which has now been replaced by 21 CFR Part 117 *Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food*. The new federal regulation updates good manufacturing processes and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Bureau proposed amending the provisions of R.61-32 and R.61-54 to incorporate standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing manufactured water-based products into one streamlined regulation, instead of two separate regulations with repetitive content.

To achieve this more functional, streamlined regulation, the Department proposed repealing R.61-54 and combining its revised provisions into R.61-32. This also includes amending the title of R.61-32 to "Wholesale Bottled Water, Soft Drinks, and Ice Manufacturing." The proposed amendments also include other changes not required by federal law, including additions, updates, and clarifications to administrative requirements, enforcement requirements, and definitions, as well as other changes deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation.

The Department had a Notice of Drafting published in the April 26, 2019, *State Register*. The Department received no public comments by the May 28, 2019, close of the public comment period.

The Bureau held a stakeholder meeting on July 24, 2019, in Columbia. The Bureau emailed information for meeting attendance to all permitted facilities, along with a proposed draft of the regulation to facilitate discussion. The Department also posted the information and draft regulation on the DHEC Manufactured Food web page to reach as broad an audience as possible.

Appropriate Department staff conducted an internal review of the proposed amendments and repeal on July 29, 2019.

The proposed amendments to these regulations serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. In addition to clarification and updating of state-specific regulatory provisions, these proposed amendments incorporate current federal standards, which have replaced preexisting federal standards upon which the Department's existing, unrevised regulations are based. This serves to reduce administrative burdens on the regulated community by facilitating streamlined inspections and compliance under both state and federal requirements.

The Bureau of Environmental Health Services respectfully requested the Board grant approval of the Notice of Proposed Regulation for publication in the September 27, 2019, *State Register*.

After discussion, **Mr. Kinney moved, seconded by Mr. Creel, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-32, Soft Drink and Water Bottling Plants, and Repealing R.61-54, Wholesale Commercial Ice Manufacturing, in the *State Register*, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 6: Notice of Proposed Regulation Amending R.61-36, Frozen Desserts, and Repealing R.61-35, Imitation Milk, Imitation Milk Products, and Productions Made in Semblance of Milk and Milk Products (Attachment 6-1)

Mr. Sandra Craig, Director, Division of Food and Lead Risk Assessments, presented this item to the Board.

The Bureau of Environmental Health Services (Bureau) proposed the Notice of Proposed Regulation amending R.61-36, *Frozen Desserts*. The Bureau further proposed revising the requirements of R.61-35, *Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products*, and merging it into R.61-36, *Frozen Desserts*. This entails repealing R.61-35, *Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products* and adding its amended requirements to R.61-36, *Frozen Desserts*. Along with merging these regulations, the Department proposed adding regulatory requirements for manufacturing cheese, butter, and other non-grade "A" milk products to R.61-36, *Frozen Desserts* and changing its title. The Bureau presented this proposal for publication in the September 27, 2019, *South Carolina State Register (State Register)*. Legal authority resides in S.C. Code Sections 44-1-140 and 44-1-150, which allow the Department of Health and Environmental Control (Department) to promulgate regulations for the production, storing, labeling, transportation, and selling of milk and milk products, filled milk and filled milk products, imitation milk and imitation milk products, synthetic milk and synthetic milk products, milk derivatives, and any other products made in semblance of milk or milk products. Furthermore, 44-1-150 allows for the enforcement of orders related to violations of these regulations. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments and repeal. R.61-36 was last amended in 2004 and R.61-35 was last amended in 1976.

The purpose of R.61-36, *Frozen Desserts*, and R.61-35, *Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products*, is to safeguard public health and provide consumers safe, unadulterated frozen dessert and imitation dairy food products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of frozen desserts and imitation dairy foods that are not regulated as "Grade A" milk under the provisions of R.61-34, *Raw Milk for Human Consumption*, or R.61-34.1, *Pasteurized Milk and Milk Products*. The current regulations are based on Title 21, *Food and Drugs*, Part 110 *Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food* of the Code of Federal Regulations (CFR) (21 CFR Part 110), which has now been replaced by 21 CFR Part 117 *Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food*. The new federal regulation updates good manufacturing processes and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Bureau proposed amending the provisions of R.61-36 and R.61-35 to incorporate standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing all manufactured dairy products into one streamlined regulation, instead of two separate regulations with repetitive content. As part of this new streamlined regulation, the Department also proposed adding requirements for manufacturing cheese, butter, and other non-grade "A" milk products. The South Carolina Department of Agriculture previously regulated cheese and butter products (also under 21 CFR Part 110, *Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food*); however, oversight now resides with DHEC.

To achieve this more functional, streamlined regulation, the Department proposed repealing R.61-35 and combining its revised provisions into R.61-36. This also includes amending the title of R.61-36 to "Manufactured Grade Dairy Products." The proposed amendments also include other changes not required by federal law, including updates from the current Pasteurized Milk Ordinance ("PMO") and additions, updates, and clarifications to administrative requirements, enforcement requirements, and definitions, as well as other

changes deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation.

The Department had a Notice of Drafting published in the April 26, 2019, *State Register*. The Department received no public comments by the May 28, 2019, close of the public comment period.

The Bureau held stakeholder meetings on July 18, 2019, in Charleston and July 25, 2019, in Anderson. The Bureau emailed information for meeting attendance to all permitted facilities, along with a proposed draft of the regulation to facilitate discussion. The Department also posted the information and draft regulation on the DHEC manufactured food web page to reach as broad an audience as possible.

Appropriate Department staff conducted an internal review of the proposed amendments and repeal on July 29, 2019.

The proposed amendments to these regulations serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. In addition to clarification and updating of state-specific regulatory provisions, these proposed amendments incorporate current federal standards, which have replaced preexisting federal standards upon which the Department's existing, unrevised regulations are based. This serves to reduce administrative burdens on the regulated community by facilitating streamlined inspections and compliance under both state and federal requirements.

The Bureau respectfully requested the Board grant approval of the Notice of Proposed Regulation for publication in the September 27, 2019, *State Register*.

After discussion, **Mr. Lee moved, seconded by Mr. Kinney, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-36, Frozen Desserts, and Repealing R.61-35, Imitation Milk, Imitation Milk Products, and Productions Made in Semblance of Milk and Milk Products, in the *State Register*, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 7: Notice of Proposed Regulation Repealing R.61-1, Medical and Dental Scholarship Fund (Attachment 7-1)

Mr. Bruce Busbee, Director, Office of Budgets and Financial Planning, Finance and Operations, presented this item to the Board.

The Office of Budgets and Financial Planning proposed the Notice of Proposed Regulation repealing R.61-1, *Medical and Dental Scholarship Fund* for publication in the September 27, 2019, *South Carolina State Register* ("*State Register*"). Legal authority resides in S.C. Code Sections 59-111-510 through 59-111-580, which established and outlined how the program was to be managed through the Department of Health and Environmental Control ("Department"). The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this repeal.

S.C. Code Sections 59-111-510 through 59-111-580 established a Medical and Dental Scholarship Fund to be administered by the Department. Pursuant to S.C. Code Section 59-111-580, the Department promulgated R.61-1 to administer the program. In 1985, the General Assembly amended the statute to eliminate references to scholarships, leaving the program as only a loan fund, revised certain program criteria, and made other changes to the program. The regulation was never revised to conform to the amended statute.

The General Assembly last funded the program in the 1988 Appropriations Act for the 1988-1989 fiscal year. The last recipients completed their service obligations in 1996 following three years of residency and four years of service. Since the General Assembly has not funded the Medical and Dental Scholarship/Loan program since FY 1989, the Department has had no funds to administer, and the program has been dormant for the past thirty years. As such, the Department proposes repealing R.61-1.

The Department had a Notice of Drafting published in the March 22, 2019, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. The Department received no public comments by the April 22, 2019, close of the public comment period.

Appropriate Department staff conducted an internal review of the proposed repeal on August 7, 2019.

The Office of Budgets and Financial Planning respectfully requested the Board grant approval of the Notice of Proposed Regulation for publication in the September 27, 2019, *State Register*.

After discussion, **Mr. Singleton moved, seconded by Mr. Creel, to grant approval to publish the Notice of Proposed Regulation repealing Regulation 61-1, Medical and Dental Scholarship Fund, in the *State Register*, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 8: Agency Affairs

Richard K. Toomey, Director, updated the Board on,

- the Department's response to Hurricane Dorian;
- the fire at Able Contracting, Inc. in Jasper County;
- the search for the Department's new Public Health Director;
- the town halls scheduled with staff during October and November 2019;
- the meeting with the South Carolina Chamber Environmental Technical Group;
- the meeting with the South Carolina Manufacturers Association;
- and the meeting with the South Carolina Institute of Medicine and Public Health.

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

Being no further business, Chairman Elam adjourned the meeting.

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

Respectfully submitted,

Charles M. Joye, II, PE

Minutes approved this 7th day of November 2019.

ATTEST:

Mark R. Elam, Chairman

Attachments

- 0-1 Agenda
- 1-1 August 8, 2019 minutes
- 2-1 Administrative and Consent Orders issued by Health Regulation
- 3-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 4-1 Notice of Proposed Regulation Amending R.30-1, Statement of Policy, and R.30-14, Administrative Procedures, South Carolina Coastal Zone Management Act
- 5-1 Notice of Proposed Regulation Amending R.61-32, Soft Drive and Water Bottling Plants, and Repealing R.61-54, Wholesale Commercial Ice Manufacturing
- 6-1 Notice of Proposed Regulation Amending R.61-36, Frozen Desserts, and Repealing R.61-35, Imitation Milk, Imitation Milk Products, and Productions Made in Semblance of Milk and Milk Products
- 7-1 Notice of Proposed Regulation Repealing R.61-1, Medical and Dental Scholarship Fund