

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

August 10, 2023

- () ACTION/DECISION
(X) INFORMATION

- I. TITLE:** Healthcare Quality Administrative and Consent Orders.
- II. SUBJECT:** Healthcare Quality Administrative Orders and Consent Orders for the period of June 1, 2023, through June 30, 2023.
- III. FACTS:** For the period of June 1, 2023, through June 30, 2023, Healthcare Quality reports 3 Consent Orders totaling \$35,060 in assessed monetary penalties.

Bureau	Facility, Service, Provider, or Equipment Type	Administrative Orders	Consent Orders	Assessed Penalties	Required Payment
Community Care	Community Residential Care Facility (CRCF)		2	\$34,760	\$17,900
Healthcare Systems and Services	In-Home Care Provider		1	\$300	\$300
TOTAL			3	\$35,060	\$18,200

Submitted By:

Gwendolyn C. Thompson

Gwen C. Thompson
Deputy Director
Healthcare Quality

HEALTHCARE QUALITY ENFORCEMENT REPORT
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

August 10, 2023

Bureau of Community Care

Facility Type	Total Number of Licensed Facilities	Total Number of Licensed Beds
Community Residential Treatment Facility (CRCF)	463	21,655

1. Palmetto Ridge Assisted Living & Memory Care – Cheraw (106 beds)

Investigation and Violations: On Jan. 13, 2022, May 24, 2022, June 27, 2022, July 29, 2022, Aug. 31, 2022, Sep. 6, 2022, Oct. 13, 2022, and Nov. 10, 2022, the Department representatives made unannounced visits to the Facility to conduct inspections, follow-up inspections and an investigation. During those inspections, the Department found the Facility in violation of Regulation 61-84 as follows:

- The Facility failed to implement their policies addressing resident abuse.
- The Facility failed to employ a licensed CRCF administrator.
- The Facility failed to have at least one staff member for each eight residents during peak hours.
- The Facility failed to report a serious incident or accident to the Department.
- The Facility failed to report abuse or suspected abuse to the SC long-Term Care Ombudsman Program.
- The Facility failed to notify the Department of any change in administrator status.
- The Facility failed to review and/or revise a resident’s ICP at least semiannually.
- The Facility failed to render care and services to residents in accordance with physician orders.
- The Facility failed to ensure a resident was free from mental abuse.
- The Facility failed to have residents’ physician order medications available for administration.
- The Facility failed to initial residents’ medication administration records as medications were administered.
- The Facility failed to keep medications in the original containers and, instead, stored loose pills in medication carts.
- The Facility stored discontinued medications with current medications.
- The Facility failed to maintain records of controlled substances in sufficient detail to enable an accurate reconciliation.
- The Facility failed to keep all equipment and building components in good repair and operating condition.

Enforcement Action: The parties agreed to resolve the matter with a Consent Order. The Facility agreed to the assessment of a \$22,960 monetary penalty. The facility agrees to pay \$12,000 in four equal payments. Two payments have been received by the Department. The Department agrees to hold the remaining \$10,960 in abeyance upon a six-month period of substantial compliance.

Remedial Action: The facility attended a compliance assistance meeting with the Department on July 19, 2023.

Prior Orders: The Department issued a Consent Order in Dec. 2021. The Facility agreed to pay \$10,300 in assessed monetary penalties. The violations were primarily medication related.

2. Reid House – Wellford (42 Beds)

Investigation and Violations: On Apr. 19, 2021, and Dec. 13, 2022, Department representatives made unannounced visits to the Facility to conduct inspections. During those inspections, the Department found the Facility in violation of Regulation 61-84 as follows:

- The Facility failed to properly initial Medication Administration records.
- The Facility failed to keep all equipment and building components in good repair and operating condition.
- The Facility failed to keep the facility free of vermin and offensive odors.
- The Facility failed to ensure that each specific interior area of the facility was clean.
- The Facility failed to ensure soiled linen/clothing were kept in enclosed containers.
- The Facility failed to properly secure oxygen cylinders.

Enforcement Action: The parties agreed to resolve the matter with a Consent Order. The Facility agrees to pay \$5,900. The remaining \$5,900 will be held in abeyance for a six-month period of substantial compliance.

Remedial Action: The Facility met with the Department on July 10, 2023, for a compliance assistance meeting.

Prior Orders: None in the past 5 years.

Bureau of Healthcare Systems and Services

Facility Type	Total Number of Licensed Facilities
In-Home Care Provider	935

1. Olive Branch Home Care Services

Investigation and Violations: The Facility failed to submit a timely renewal application and licensing fees by the license expiration date.

Enforcement: The Department and the Facility decided to resolve the matter through a Consent Order. The Facility paid the \$300 monetary penalty.

Remedial Action: none

Prior Orders: None in the past 5 years.

SUMMARY SHEET
 BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
 August 10, 2023

_____ ACTION/DECISION

X INFORMATION

1. **TITLE:** Administrative and Consent Orders issued by the Office of Environmental Affairs.
2. **SUBJECT:** Administrative and Consent Orders issued by the Office of Environmental Affairs during the period June 1, 2023, through June 30, 2023.
3. **FACTS:** For the reporting period of June 1, 2023, through June 30, 2023, the Office of Environmental Affairs issued twenty-four (24) Consent Orders with total assessed civil penalties in the amount of ninety-one thousand, six hundred twenty dollars (\$91,620.00). Also, fifteen (15) Administrative Orders with total assessed civil penalties in the amount of one hundred forty-nine thousand, nine hundred eighty-five dollars and eighty-five cents (\$149,985.85) were reported during this period.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Orders	Assessed Penalties
Land and Waste Management				
UST Program	5	\$149,985.85	9	\$26,470.00
Solid Waste	0	0	0	0
Hazardous Waste	0	0	2	\$25,000.00
Mining	0	0	1	\$0.00
Radiological Health	0	0	2	\$12,750.00
SUBTOTAL	5	\$149,985.85	14	\$64,220.00
Water				
Recreational Water	0	0	0	\$0.00
Drinking Water	0	0	1	\$0.00
Water Pollution	0	0	6	\$26,400.00
SUBTOTAL	0	0	7	\$26,400.00
Air Quality				
SUBTOTAL	0	0	3	\$1,000.00
Environmental Health Services				
Onsite Wastewater	10	\$0.00	0	\$0.00
SUBTOTAL	10	\$0.00	0	\$0.00
OCRM				
SUBTOTAL	0	\$0.00	0	\$0.00
TOTAL	15	\$149,985.85	24	\$91,620.00

Submitted by:

Myra C. Reece
 Myra C. Reece
 Director of Environmental Affairs

**ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
August 10, 2023**

BUREAU OF LAND AND WASTE MANAGEMENT

Underground Storage Tank Enforcement

- 1) Order Type and Number: Administrative Order 21-0650-UST
Order Date: November 18, 2022
Individual/Entity: **Kesav, Inc.**
Facility: Sam's Grocery & Grill
Location: 1969 South Highway 501
Marion, SC 29571
Mailing Address: 507 South Main Street
Bishopville, SC 29010
County: Marion
Previous Orders: None
Permit/ID Number: 06208
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-60(A) (2018) and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.21(a)(3), 280.22(b), 280.70(a), 280.70(c), 280.93(a), 280.110(c), and 280.243(b) (2012 & Supp 2022).

Summary: Kesav, Inc. (Individual/Entity) owns underground storage tanks (USTs) in Marion County, South Carolina. On September 20, 2021, the Department conducted a file review of the Facility and issued a Transfer of Ownership – New Owner letter. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to close the USTs in accordance with Subpart G of the Regulation; failed to notify the Department of ownership change within thirty (30) days of acquisition of an UST system; failed to maintain corrosion protection for a temporarily closed UST; failed to properly close an UST system that has been temporarily closed for more than twelve (12) months and does not meet either performance standards in Section 280.20 or upgrading requirements in Section 280.21; failed to demonstrate financial responsibility for an UST system; failed to submit evidence of financial assurance to the Department upon request; failed to have a properly trained Class A and B operator within thirty (30) days of assuming duties; and failed to pay Annual Tank Registration Fees and Associated Late Fees.

Action: The Individual/Entity is required to: pay Annual Tank Registration Fees and associated late fees for fiscal year 2023 in the amount of three hundred sixty-three dollars (\$363.00); submit an UST Tank and Sludge Disposal Form for the permanent closure of the UST at the Facility by July 17, 2023; permanently close the USTs within forty-five (45) days of the Department's approval of the Tank and Sludge Disposal Form; and submit an UST Closure and Assessment Report within sixty (60) days of closure. If the UST Closure and Assessment Report indicates contamination, submit a completed Certificate of Financial Responsibility form and evidence of financial assurance as directed by the Department. The Department has assessed a total civil penalty in the

amount of forty-seven thousand, two hundred dollars (\$47,200.00). The civil penalty in the amount of forty-seven thousand, two hundred dollars (**\$47,200.00**) shall be due on or before July 17, 2023.

Update: There is now an updated AO that supersedes this one, these requirements are no longer pertinent. .

2) Order Type and Number: Administrative Order 23-0055-UST
Order Date: May 11, 2023
Individual/Entity: **Sanjay & Ulka Patel**
Facility: Forestbrook Grocery
Location: 1272 Forestbrook Road
Myrtle Beach, SC 29579
Mailing Address: 2521 Hunters Trail
Myrtle Beach, SC 29588
County: Horry
Previous Orders: AO 19-0523-UST (\$9,413.00)
Permit/ID Number: 17398
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-10(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.21(a)(3), 280.31(a), and 280.70(c) (2012 & Supp. 2022).

Summary: Sanjay & Ulka Patel (Individual/Entity) own underground storage tanks (USTs) in Horry County, South Carolina. Based on a file review conducted on February 3, 2023, the Department issued a Notice of Alleged Violation. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to properly close a substandard UST system ; failed to maintain and operate a corrosion protection system continuously; and failed to properly abandon a temporarily closed UST system after twelve (12) months. This is a repeat violator.

Action: The Individual/Entity is required to submit: a Tank and Sludge Disposal form for the permanent closure of the USTs at the Facility by July 22, 2023; permanently close the USTs within forty-five (45) days of the Department's approval of the Tank and Sludge Disposal Form; and submit an UST Closure and Assessment Report within sixty (60) days after the tanks have been permanently closed. The Department has assessed a total civil penalty in the amount of nineteen thousand, four hundred seventy-five dollars (\$19,475.00). The Individual/Entity shall pay a civil penalty in the amount of nineteen thousand, four hundred seventy-five dollars (**\$19,475.00**) by July 22, 2023.

Update: None.

3) Order Type and Number: Administrative Order 23-0398-UST
Order Date: May 11, 2023
Individual/Entity: **Pareshkumar Patel**
Facility: Quick Food Mart 1
Location: 2555 North Dawson Drive
Chester, SC 29706

Mailing Address: 1139 Johnston Parkway
Kenly, NC 27542
County: Chester
Previous Orders: None
Permit/ID Number: 12357
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. Code Ann. § 44-2-10 et seq., § 44-2-10(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.21(a)(3), 280.31(a), 280.70(a), 280.70(c), 280.93(a), and 280.110(c) (2012 & Supp. 2022).

Summary: Pareshkumar Patel (Individual/Entity) owns underground storage tanks (USTs) in Chester County, South Carolina. Based on a file review conducted on October 5, 2022, the Department issued a Transfer of Ownership – New Owner Notice of Alleged Violation. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to properly close a substandard UST system; failed to maintain and operate a corrosion protection system continuously; failed to maintain corrosion protection on a temporarily closed UST; failed to properly abandon a temporarily closed UST system after twelve (12) months; failed to demonstrate financial responsibility for a UST system; and failed to submit evidence of financial assurance to the Department upon request.

Action: The Individual/Entity is required to: submit a Tank and Sludge Disposal form for the permanent closure of the USTs at the Facility by July 22, 2023; permanently close the USTs within forty-five (45) days of the Department’s approval of the Tank and Sludge Disposal Form; submit an UST Closure and Assessment Report within sixty (60) days after the tanks have been permanently closed. If the UST Closure and Assessment Report indicates contamination, within thirty (30) days of the Department’s notification, submit a completed Certificate of Financial Responsibility form and evidence of financial assurance. The Department has assessed a total civil penalty in the amount of forty-nine thousand, six hundred seventy-five dollars (\$49,675.00). The Individual/Entity shall pay a civil penalty in the amount of forty-nine thousand, six hundred seventy-five dollars (**\$49,675.00**) by July 22, 2023.

Update: None.

4) Order Type and Number: Administrative Order 22-0268-UST
Order Date: June 9, 2023
Individual/Entity: **Rudra Ganesh, LLC**
Facility: Smokerise Inn & Out
Location: 2415 Pineview Drive
Lancaster, SC 29720
Mailing Address: 143 Halifax Drive
Indian Land, SC 29707
County: Lancaster
Previous Orders: None
Permit/ID Number: 05529
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. Code Ann. § 44-2-10 et seq., § 44-2-60(A) (2018), and the South Carolina Underground Storage

Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.93(a) and 280.110(c) (2012 & Supp 2022).

Summary: Rudra Ganesh, LLC (Individual/Entity) owns an underground storage tank (UST) system in Lancaster County, South Carolina. On June 13, 2022, the Department conducted a file review and issued a Transfer of Ownership – New Owner Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act, and the South Carolina Underground Storage Tank Regulation, as follows: failed to demonstrate financial responsibility for an UST system and failed to submit evidence of financial assurance to the Department.

Action: The Individual/Entity is required to: submit a completed Certificate of Financial Responsibility and proof of financial assurance by August 11, 2023. The Department has assessed a total civil penalty in the amount of twenty-eight thousand, six hundred dollars (\$28,600.00). The Individual/Entity shall pay a civil penalty in the amount of twenty-eight thousand, six hundred dollars (**\$28,600.00**) by August 11, 2023.

Update: None.

5) Order Type and Number: Administrative Order 22-0278-UST
Order Date: June 9, 2023
Individual/Entity: **Sel Properties, LLC**
Facility: Lancaster Creamery
Location: 1476 Memorial Park Road
Lancaster, SC 29720
Mailing Address: P.O. Box 11641
Columbia, SC 29211
County: Lancaster
Previous Orders: None
Permit/ID Number: 05495
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. Code Ann. § 44-2-10 et seq., § 44-2-60(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.65 (2012 & Supp 2022).

Summary: Sel Properties, LLC (Individual/Entity) owned an underground storage tank (UST) in Lancaster County, South Carolina. On July 14, 2022, the Department conducted a file review and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act, and the South Carolina Underground Storage Tank Regulation as follows: failed to comply with the requirements for the investigation of soil and groundwater cleanup as directed by the Department.

Action: The Individual/Entity is required to submit a monitoring well abandonment report by August 11, 2023, in accordance with the Notice issued on January 28, 2022. The Department has assessed a total civil penalty in the amount of five thousand, thirty-five dollars and eighty-five cents (\$5,035.85). The Individual/Entity shall pay a civil penalty in the amount of five thousand, thirty-five dollars and eighty-five cents (**\$5,035.85**) by August 11, 2023.

Update: None.

6) Order Type and Number: Consent Order 23-0098-UST
Order Date: June 9, 2023
Individual/Entity: **Bahuchar Mata, LLC**
Facility: Quick Pantry 19
Location: 1802 South Main Street
Greenwood, SC 29646
Mailing Address: 311 Oakmonte Circle
Greenwood, SC 29649
County: Greenwood
Previous Orders: 21-0541-UST (\$8,750.00);
21-0041-UST (\$7,000.00)
Permit/ID Number: 04785
Violations Cited: The State Underground Petroleum
Environmental Response Bank Act of 1988 (SUPERB Act), S.C. Code Ann. § 44-
2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage
Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.20(c)(1)(ii) (2012 &
Supp 2022).

Summary: Bahuchar Mata, LLC (Individual/Entity) owns underground storage tanks (USTs) in Greenwood County, South Carolina. On April 10, 2023, the Department conducted an inspection and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain overfill prevention equipment. This is a repeat violator.

Action: The Individual/Entity corrected the violation prior to issuance of the Order. The Department has assessed a total penalty in the amount of three thousand, six hundred dollars (\$3,600.00). The Individual/Entity shall pay a total civil penalty in the amount of three thousand, six hundred dollars (**\$3,600.00**) by July 24, 2023.

Update: The Individual/Entity has paid the civil penalty. The Consent Order is closed.

7) Order Type and Number: Consent Order 22-0252-UST
Order Date: June 12, 2023
Individual/Entity: **11550 Augusta Rd, LLC**
Facility: Rustic Rooster
Location: 11550 Augusta Road
Honea Path, SC 29654
Mailing Address: 312 Traynham Boulevard
Greenville, SC 29609
County: Greenville
Previous Orders: None
Permit/ID Number: 12347
Violations Cited: The State Underground Petroleum
Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-
2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage
Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.21(a), 280.31(a),
280.70(c), 280.93(a), 280.110(c), and 280.243(b) (2012 & Supp 2022).

Summary: 11550 Augusta Rd, LLC (Individual/Entity) owns an underground storage tank system (UST) in Greenville County, South Carolina. On May 27, 2022, the Department conducted a file review of the Facility and issued a Transfer of Ownership – New Owner Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to comply with the performance standards of Section 280.20, or upgrading requirements in Section 280.21, or closure and corrective action requirements found in Subparts G and F; failed to maintain and operate a corrosion protection system; failed to properly abandon an UST system that has been temporarily closed after twelve (12) months; failed to demonstrate financial responsibility for an UST system; failed to submit evidence of financial assurance to the Department upon request; and failed to have a Class A/B operator trained in facility specific operation and maintenance and/or emergency response actions; and failed to pay Annual Tank Registration Fees.

Action: The Individual/Entity is required to: pay Annual Tank Registration Fees and associate late fees for fiscal years 2014 through 2021 in the amount of seven thousand, nine hundred eighty-six dollars (\$7,986.00) in accordance with a promissory note; submit an UST Tank and Sludge Disposal Form for the permanent closure of all USTs at the Facility by July 27, 2023; permanently close the USTs within forty-five (45) days of the Department’s approval of the Tank and Sludge Disposal Form; submit an UST Closure and Assessment Report within sixty (60) days of closure; and should the UST Closure and Assessment Report indicate contamination, submit a completed Certificate of Financial Responsibility form and evidence of financial assurance as directed by the Department. The Department has assessed a total penalty in the amount of forty thousand, eight hundred fifty dollars (\$40,850.00). The Individual/Entity shall pay a **suspended penalty** in the amount of forty thousand, eight hundred fifty dollars (**\$40,850.00**) should any requirement of the Order not be met.

Update: All four Annual Tank Registration Fees payments have been made in accordance with the promissory note. The USTs have been removed from the ground as of 7/24/23. The Closure report is due on September 9, 2023.

8) Order Type and Number: Consent Order 23-0026-UST
Order Date: June 14, 2023
Individual/Entity: **A. A. Dicks Corp. dba A. A. Dicks
Funeral Home**
Facility: Original Blue Ribbon Taxi Cab Corporation
Location: 6400 North Main Street
Columbia, SC 29203
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 18367
Violations Cited: The State Underground Petroleum
Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-
2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage
Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.93 (a), 280.110(c),
and 280.243(b) (2012 & Supp 2022).

Summary: A.A. Dicks Corporation dba A.A. Dicks Funeral Home

(Individual/Entity) owns a compartmented underground storage tank (UST) in Richland County, South Carolina. On November 28, 2022, the Department conducted a routine file review and issued a Transfer of Ownership New Owner Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to demonstrate financial responsibility for an UST system and failed to submit evidence of financial assurance to the Department upon request and failed to complete the Class A/B operator training.

Action: The Individual/Entity is required to: submit a completed Certificate of Financial Responsibility form, submit evidence of financial assurance as directed by the Department, and complete Class A/B operator training, and submit proof by July 29, 2023. The Department has assessed a total penalty in the amount of twenty-six thousand, four hundred dollars (\$26,400.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand, four hundred dollars (**\$1,400.00**) by July 29, 2023, and pay a suspended penalty in the amount of twenty-five thousand dollars (\$25,000.00) should any requirement of the Order not be met.

Update: The Individual/Entity has paid the penalty and completed the operator training.

9) Order Type and Number: Consent Order 23-0065-UST
Order Date: June 14, 2023
Individual/Entity: **James River Petroleum, Inc.**
Facility: Happy Express
Location: 1431 East Tom Hall Street
Fort Mill, SC 29715-7002
Mailing Address: 10487 Lakeridge Parkway, Suite 100
Ashland, VA 23005-8115
County: York
Previous Orders: None
Permit/ID Number: 09352
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.93 (a) and 280.110(c) (2012 & Supp 2022).

Summary: James River Petroleum, Inc. (Individual/Entity) owns underground storage tanks (USTs) in York County, South Carolina. On February 6, 2023, the Department conducted a routine file review and issued a Notice of Alleged Violation. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to demonstrate financial responsibility for an UST system and failed to submit evidence of financial assurance to the Department upon request.

Action: The Individual/Entity is required to submit a completed Certificate of Financial Responsibility form and evidence of financial assurance by July 29, 2023. The Department has assessed a total penalty in the amount of twenty-five thousand, seven hundred twenty dollars (\$25,720.00). The Individual/Entity shall pay a civil penalty in the amount of seven hundred twenty dollars (**\$720.00**) by July 29, 2023, and pay a suspended penalty in the amount of twenty-five thousand dollars (\$25,000.00) should any

requirement of the Order not be met.

Update: The Individual/Entity has paid the penalty.

- 10) Order Type and Number: Consent Order 23-0057-UST
Order Date: June 21, 2023
Individual/Entity: **Mountain Express Oil Company**
Facility: Mex #3201
Location: 175 Truck Stop Road
Cowpens, SC 29330
Mailing Address: 5333 Bell Ferry Road, Ste. 201
Acworth, Georgia, 30102
County: Spartanburg
Previous Orders: None
Permit/ID Number: 11080
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-10(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.22(b) (2012 & Supp. 2022).

Summary: Mountain Express Oil Company (Individual/Entity) owns underground storage tanks (UST's) in Spartanburg County, South Carolina. Based on a routine file review conducted on February 8, 2023, the Department issued a Transfer of Ownership-New Owner Notice of Alleged Violation. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to notify the Department of ownership change within thirty (30) days of acquisition of a regulated UST system.

Action: The Individual/Entity corrected the violation prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of two hundred dollars (\$200.00). The Individual/Entity shall pay a civil penalty in the amount of two hundred dollars (**\$200.00**).

Update: The Individual/Entity has paid the civil penalty. The Order is Closed.

- 11) Order Type and Number: Consent Order 23-0085-UST
Order Date: June 21, 2023
Individual/Entity: **Duc Nguyen**
Facility: Lucky Ninety Nine
Location: 2779 Pageland Highway
Lancaster, SC 29720
Mailing Address: Same
County: Lancaster
Previous Orders: None.
Permit/ID Number: 05507
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage

Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.20(c)(1)(ii) (2012 & Supp 2022).

Summary: Duc Nguyen (Individual/Entity) owns and operates underground storage tanks (USTs) in Lancaster County, South Carolina. On April 24, 2023, the Department conducted an inspection and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain overfill prevention equipment.

Action: The Individual/Entity is required to: submit proof the obstruction was removed from the 8,000-gallon regular UST and submit passing follow-up overfill prevention equipment operability test results for the 8,000-gallon and 10,000-gallon USTs by August 7, 2023. The Department has assessed a total penalty in the amount of seven thousand, two hundred dollars (\$7,200.00). The Individual/Entity shall pay a civil penalty in the amount of seven thousand, two hundred dollars (**\$7,200.00**) by August 7, 2023.

Update: None.

12) Order Type and Number: Consent Order 23-0097-UST
Order Date: June 21, 2023
Individual/Entity: **H. L. Carter**
Facility: Mr. Bunky's
Location: 10441 Garners Ferry Road
Eastover, SC 29044-9801
Mailing Address: Same
County: Richland
Previous Orders: None.
Permit/ID Number: 07839
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-10(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.20(c)(1)(ii) (2012 & Supp. 2022).

Summary: H. L. Carter (Individual/Entity) owns and operates underground storage tanks (USTs) in Richland County, South Carolina. Based on a routine inspection conducted on April 12, 2023, the Department issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain overfill prevention equipment of an underground storage tank system.

Action: The Individual/Entity corrected the violation prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of three thousand, six hundred dollars (\$3,600.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand, six hundred dollars (**\$3,600.00**).

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

13) Order Type and Number: Consent Order 23-0104-UST

Order Date: June 21, 2023
Individual/Entity: **JH Seale and Son, Inc.**
Facility: Country Boy Store
Location: 2671 Woodrow Road
Sumter, South Carolina 29150
Mailing Address: 870 South Guinard Drive
Sumter, SC 29150
County: Sumter
Previous Orders: None
Permit/ID Number: 18778
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-10(A) (2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.26(f) (2012 & Supp. 2022).

Summary: JH Seale and Son, Inc. (Individual/Entity) is a carrier/supplier of bulk fuels for delivery to underground storage tanks (USTs) in Sumter County, South Carolina. The Department conducted a site visit on April 27, 2023, and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: illegally delivered fuel while an UST was under delivery prohibition.

Action: The Individual/Entity corrected the violation prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of four thousand, five hundred dollars (\$4,500.00). The Individual/Entity shall pay a civil penalty in the amount of four thousand five hundred dollars (**\$4,500.00**).

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

14) Order Type and Number: Consent Order 23-0105-UST
Order Date: June 21, 2023
Individual/Entity: **Anuj Patel**
Facility: Country Boy Store
Location: 2671 Woodrow Road
Sumter, SC 29150
Mailing Address: Same
County: Sumter
Previous Orders: None
Permit/ID Number: 18778
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq., § 44-2-60(A)(2018), and the South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.26 (f) (2012 & Supp 2022).

Summary: Anuj Patel (Individual/Entity) owns a compartmented underground storage tank (UST) in Sumter County, South Carolina. On April 27, 2023, the Department conducted a site visit and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: received an illegal delivery while the UST was

under delivery prohibition.

Action: The Individual/Entity corrected the violation prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of five thousand, two hundred fifty dollars (\$5,250.00). The Individual/Entity is required to pay a total civil penalty in the amount of five thousand, two hundred fifty dollars (**\$5,250.00**) by August 5, 2023.

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

Hazardous Waste Enforcement

- 15) Order Type and Number: Consent Order 23-15-HW
Order Date: June 12, 2023
Individual/Entity: **United States Air Force Shaw Air Force Base**
Facility: United States Air Force Shaw Air Force Base
Location: 428 Chapin Street
Shaw AFB, SC
Mailing Address: Same
County: Sumter
Previous Orders: None
Permit/ID Number: SC7 570 024 466
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018) and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2021).

Summary: The United States Air Force Shaw Air Force Base (Individual/Entity) is an air force base located in Sumter County, South Carolina. The Department conducted an inspection at the facility on January 31, 2023. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to label or clearly mark each container of non-creditable hazardous waste pharmaceuticals with the phrase “Hazardous Waste Pharmaceuticals;” failed to make readily available all records for shipment of creditable hazardous waste pharmaceuticals upon request; failed to make an accurate waste determination; failed to submit a copy of the contingency plan and all revisions to all local emergency responders.

Action: The Individual/Entity corrected all violations prior to the issuance of the Consent Order. The Department has assessed a total civil penalty in the amount of seven thousand dollars (\$7,000.00). The Individual/Entity shall pay a civil penalty in the amount of seven thousand dollars (**\$7,000.00**) by July 12, 2023.

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

- 16) Order Type and Number: Consent Order 23-17-HW
Order Date: June 26, 2023

<u>Individual/Entity:</u>	Plastic Omnium Auto Exteriors, LLC
<u>Facility:</u>	Plastic Omnium Auto Exteriors, LLC
<u>Location:</u>	50 Tyger River Drive Duncan, SC 29334
<u>Mailing Address:</u>	Same
<u>County:</u>	Spartanburg
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	SCR 000 786 723
<u>Violations Cited:</u>	The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 <u>et seq.</u> (2018), and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2021).

Summary: Plastic Omnium Auto Exteriors, LLC (Individual/Entity) is an automotive parts supplier and painter at its facility located in Spartanburg County, South Carolina. The Department conducted an inspection at the facility on February 8, 2023. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations, as follows: failed to clean up hazardous waste spillage that occurred during processing; failed to close containers during accumulation, except when adding and removing hazardous waste; failed to mark or label its containers with an indication of the hazards of the contents; failed to determine if a waste was a hazardous waste; failed to maintain records documenting hazardous waste determinations; failed to revise its Notification Form on file with the Department whenever the generator status became inaccurate; failed to close and properly label universal waste lamps; failed to ensure employees had received universal waste training; failed to ensure personnel took part in a hazardous waste training program and were trained within six (6) months from the date of hire; failed to notify the Department within seventy-two (72) hours of an unplanned episodic event; failed to include/describe an evacuation plan in the Contingency Plan; failed to submit a revised copy of the Contingency Plan and the Quick Reference Guide to the local emergency responders; and failed to include the corrective action date, the time of inspection, and the inspectors name in the weekly hazardous waste inspection log.

Action: The Individual/Entity is required to: submit a Waste Management Plan by August 25, 2023. The Department has assessed a total civil penalty in the amount of eighteen thousand dollars (\$18,000.00). The Individual/Entity shall pay a civil penalty in the amount of eighteen thousand dollars (**\$18,000.00**) by July 26, 2023.

Update: The Individual/Entity has paid the penalty.

Mining Enforcement

17) <u>Order Type and Number:</u>	Consent Order of Permit Revocation 23-03-MSWM
<u>Order Date:</u>	June 14, 2023
<u>Individual/Entity:</u>	Liston T. Hardee & Son, Inc.
<u>Facility:</u>	Hardee Mine
<u>Location:</u>	0.30 miles west of SC Secondary Highway S-26-348, and 0.75 mile southwest of the intersection of S-26-348 and S-26-915

Mailing Address: 1835 Highway 348
Loris, South Carolina 29569
County: Horry
Previous Orders: None
Permit/ID Number: I-001055
Violations Cited: The South Carolina Mining Act, S.C. code Ann. § 48-20-10 et seq. (2008 & Supp. 2018); the South Carolina Mining Regulation (2012) R.89-210 and R.89-340(B); and the Permit I-001055 Section IX.1.

Summary: Liston T. Hardee & Son, Inc. (Individual/Entity) operates Hardee Mine in Horry County, South Carolina. The Department conducted a records reviews between July 1, 2019 and March 20, 2023. The Individual/Entity has violated the South Carolina Mining Act, the Mining Regulations, and the Permit, as follows: failed to submit the mining annual report and mining annual operating fees.

Action: As of the execution date of the Consent Order, Mining Permit Number I-001055 will be revoked. The Department will obtain the financial assurance for the Mine to complete reclamation activities. Any unused money will be returned to Harold Hardee.

Update: None.

Radiological Health Enforcement

18) Order Type and Number: Consent Order 23-03-RH
Order Date: June 14, 2023
Individual/Entity: **Michelin North America, Inc.**
Facility: Michelin North America, Inc.
Location: 1000 International Drive
Spartanburg, SC 29304
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: License Number 956
Violations Cited: The Atomic Energy and Radiation Control Act, S.C. Code Ann. §§ 13-7-10 et seq. (2017) and the Radioactive Materials (Title A) Regulations, 5 S.C. Code Ann. Regs. 61-63 (2021).

Summary: Michelin North America, Inc. (Individual/Entity), is a tire manufacturer located in Spartanburg County, South Carolina. The Department conducted an inspection at the facility on December 1, 2021. The Individual/Entity has violated the Atomic Energy and Radiation Control Act and the Radioactive Materials (Title A) Regulations as follows: failed to not possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations.

Action: The Individual/Entity corrected the violation prior to the issuance of the Consent Order. The Department has assessed a total civil penalty in the amount of ten thousand dollars (\$10,000.00). The Individual/Entity shall pay a civil penalty in the amount of ten thousand dollars (**\$10,000.00**) by July 14, 2023.

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

- 19) Order Type and Number: Consent Order 23-02-RH
Order Date: June 26, 2023
Individual/Entity: **Thomas B. Stoddard, DMD**
Facility: Thomas B. Stoddard, DMD
Location: 1112 Grace Street
Greenwood, SC 29649
Mailing Address: Same
County: Greenwood
Previous Orders: None
Permit/ID Number: Registration 24-2522
Violations Cited: The Atomic Energy and Radiation Control Act, S.C. Code Ann. § 13-7-10 et seq. (2017) and the X-Rays (Title B) Regulations, 6 S.C. Code Ann. Regs. 61-64 (2021).

Summary: Thomas B. Stoddard, DMD (Individual/Entity) operates a dental practice in Greenwood County, South Carolina. The Department conducted an inspection at the facility on August 2, 2023. The Individual/Entity has violated Atomic Energy and Radiation Control Act and the X-Rays (Title B) Regulations as follows: failed to conduct equipment performance tests on the required frequency and retain records of testing results; failed to maintain interlock on door or moveable panel; and failed to maintain documentation that operators had completed training on equipment.

Action: The Individual/Entity corrected all violations prior to the issuance of the Consent Order. The Department has assessed a total civil penalty in the amount of two thousand, seven hundred fifty dollars (\$2,750.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand, seven hundred fifty dollars (**\$2,750.00**) by July 30, 2023.

Update: The Individual/Entity has paid the civil penalty. The Order is closed.

BUREAU OF WATER

Drinking Water Enforcement

- 20) Order Type and Number: Consent Order 23-014-DW
Order Date: June 2, 2023
Individual/Entity: **Audrey Richards, Individually and d.b.a. Andrea Court**
Facility: Andrea Court
Location: 1610 Double Branch Road
West Columbia, SC 29169
Mailing Address: 1625 Double Branch Road
West Columbia, SC 29169
County: Lexington

Previous Orders: None
Permit/ID Number: 3279033
Violations Cited: S.C. Code Ann. Regs. 61-58.7 & 61-58.8.B

Summary: Audrey Richards, Individually and d.b.a. Andrea Court (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Lexington County, South Carolina. The Department conducted an inspection on February 14, 2023, and the PWS was rated unsatisfactory for failure to properly operate and maintain. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: there was no sanitary seal, well pad, or well cover; there was no check valve or blow-off; there was exposed electrical wiring and no junction box; the wellhead piping was buried and too low to the ground; there were objects and debris stored inside the well house that were not associated with the well or the storage tank; the storage tank was dirty and could not be isolated; the well house was dirty with insect activity; there was no procedures manual with programs and logs; there was an old well inside the well house; there was no emergency plan; and the well serving the system was permitted as a residential well.

Action: The Individual/Entity is required to: connect to the City of West Columbia by September 1, 2023, and submit a written request for the intended use of the well serving the system and the old well inside the well house within fifteen days of completion of the connection. The Individual/Entity will be required to submit to the Department a corrective action plan and schedule to address the deficiencies within sixty days of the date of written notification by the Department if the requirement to connect to the City of West Columbia is not met within the specified timeline. The Department has assessed a total civil penalty in the amount of eight thousand dollars (\$8,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of eight thousand dollars (**\$8,000.00**) should any requirement of the Order not be met.

Update: The City of West Columbia has installed a water main that runs in front of the residences on Andrea Court, and the individual meters boxes have also been installed.

Water Pollution Enforcement

21) Order Type and Number: Consent Order 23-025-W
Order Date: June 6, 2023
Individual/Entity: **Berkeley County School District**
Facility: Oakley Maintenance Facility
Location: Moncks Corner, SC 29461
Mailing Address: 2226 Old Hwy 52
County: Berkeley
Previous Orders: None
Permit/ID Number: SC0026867
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) and Water Pollution Control Permits Regulation, S.C. Code Ann Regs. 61-9.122.41(a), and NPDES SC0026867

Summary: Berkeley County School District (Individual/Entity) owns and is responsible for the proper operation and maintenance of its wastewater treatment facility

(WWTF) in Berkeley County, South Carolina. On April 21, 2023, a Notice of Alleged Violation (NOAV) was issued as a result of Escherichia coli (E.coli) violations reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulations as follows: failed to comply with limitations of NPDES Permit SC0026867 for E.coli.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve the violations by July 6, 2023; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of four thousand , five hundred dollars (\$4,500.00). The Individual/Entity shall pay a civil penalty in the amount of four thousand, five hundred dollars (**\$4,500.00**) by July 6, 2023.

Update: The Individual/Entity has paid the civil penalty and submitted a written completion date for all corrective actions.

22) Order Type and Number: Consent Order 23-026-W
Order Date: June 6, 2023
Individual/Entity: **Hilton Head No. 1 Public Service District**
Facility: Hilton Head PSD WWTF
Location: 21 Oak Park Drive
Hilton Head, SC 29926
Mailing Address: Same
County: Beaufort
Previous Orders: 23-008-W (\$3,500.00)
Permit/ID Number: SC0046191
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d), and Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41(a)

Summary: Hilton Head No. 1 Public Service District (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Beaufort County, South Carolina. The Individual/Entity reported violations of chronic toxicity (CTOX) on discharge monitoring reports (DMRs) submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation in that it failed to comply with the permitted effluent limitations for CTOX.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve effluent violations by July 6, 2023; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of two thousand, eight hundred dollars (\$2,800.00). The Individual/Entity shall pay the civil penalty in the amount of two thousand, eight hundred dollars (**\$2,800.00**) by June 6, 2023.

Update: None.

23) Order Type and Number: Consent Order 23-027-W
Order Date: June 9, 2023
Individual/Entity: **Charleston County School District – Lincoln High**
Facility: Charleston County School District – Lincoln High WWTF
Location: 3999 Bridgeview Dr
North Charleston, SC 29405
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit/ID Number: ND0073016
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d); Water Pollution Control Permits, S.C. Code Ann. Regs. 61-.122.21(d); 61-9.122.41(a), and State Land Application Permit No. ND0073016, Part II.B.

Summary: Charleston County School District – Lincoln High (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) in Charleston County, South Carolina. On January 10, 2023, a Notice of Violation (NOV) was issued to the Individual/Entity for failure to reapply for permit coverage within one hundred eighty (180) days before the existing permit expired. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permit Regulations as follows: failed to submit a permit renewal application for renewal of the NPDES Permit at least one hundred eighty (180) days before the existing permit expired.

Action: The Individual/Entity is required to continue to operate the WWTF in accordance with State Land Application Discharge Permit # ND0073016, until a new permit issued by the Department becomes effective; and submit an administratively complete application for the renewal of State Land Application Discharge Permit # ND0073016 by June 24, 2023. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay the civil penalty in the amount of one thousand dollars (**\$1,000.00**) by June 6, 2023.

Update: The Individual/Entity has submitted the required permit renewal application and has paid the civil penalty.

24) Order Type and Number: Consent Order 23-028-W
Order Date: June 14, 2023
Individual/Entity: **Town of Moncks Corner**
Facility: Moncks Corner WWTF
Location: Moncks Corner, SC 29461
Mailing Address: P.O. Box 266
County: Berkeley
Previous Orders: None
Permit/ID Number: SC0021598
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) and Water Pollution Control Permits Regulation, S.C. Code Ann Regs. 61-9.122.41(a), and NPDES SC0021598

Summary: The Town of Moncks Corner (Individual/Entity) owns and is responsible for the proper operation and maintenance of its wastewater treatment facility (WWTF) in Berkeley County, South Carolina. On January 24, 2023, a Notice of Alleged Violation (NOAV) was issued as a result of Escherichia coli (E.coli) violations reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulations as follows: failed to comply with limitations of NPDES Permit SC0021598 for E.coli.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve the violations by July 14, 2023; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of three thousand, five hundred dollars (\$3,500.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand five hundred dollars **(\$3,500.00)** by July 14, 2023.

Update: The Individual/Entity has paid the civil penalty and submitted a written completion date for all corrective actions. The monitoring events are complete. The Order is closed.

25) <u>Order Type and Number:</u>	Consent Order 23-029-W
<u>Order Date:</u>	June 28, 2023
<u>Individual/Entity:</u>	Town of Bowman
<u>Facility:</u>	Town of Bowman WWTF
<u>Location:</u>	Secondary Road #36 Bowman, SC 29018
<u>Mailing Address:</u>	P.O. Box 37 Bowman, SC 29018
<u>County:</u>	Orangeburg
<u>Previous Orders:</u>	21-040-W (\$3,000.00) 21-078-W (\$9,000.00)
<u>Permit/ID Number:</u>	SC0040037
<u>Violations Cited:</u>	Pollution Control Act, S.C. Code Ann. § 48-1-110(d) and Water Pollution Control Permits Regulation S.C. Code Ann. Regs. 61-9.122.41(a)

Summary: Town of Bowman (Individual/Entity) owns and is responsible for a wastewater treatment facility (WWTF) located in Orangeburg County, South Carolina. The Individual/Entity reported violations of total residual chlorine (TRC), ammonia-nitrogen (ammonia), Escherichia coli (E.coli), and total suspended solids percent removal (TSS % removal) on discharge monitoring reports (DMRs) submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation, as follows: failed to comply with the permitted effluent limitations for TRC, ammonia, E.coli, and TSS % removal.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve the effluent violations by July 28, 2023; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF

should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of four thousand, eight hundred dollars (\$4,800.00). The Individual/Entity shall pay a civil penalty in the amount of four thousand, eight hundred dollars (**\$4,800.00**) by July 28, 2023.

Update: None.

26) Order Type and Number: Consent Order 23-030-W
Order Date: June 28, 2023
Individual/Entity: **Town of Lexington**
Facility: Water Gate WWTF
Location: end of Old Chapin Road within the gated
Lands End Condo Complex, Lexington, SC
Mailing Address: 111 Maiden Lane
Lexington, SC 29072
County: Lexington
Previous Orders: None
Permit/ID Number: SC0027162
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-110 (d); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a)

Summary: The Town of Lexington (Individual/Entity) is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Lexington County, South Carolina. On April 7, 2022, a Notice of Violation was issued as a result of violations of the permitted discharge limits for ammonia-nitrogen (ammonia) and biochemical oxygen demand (BOD) as reported on discharge monitoring reports submitted to the Department. On October 19, 2022, a Notice of Violation was issued as a result of violations of the permitted discharge limits for dissolved oxygen (DO) as reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for ammonia, BOD, and DO.

Action: The Individual/Entity is required to: effect the complete elimination of the discharge from the Water Gate WWTF through connection to the regional system unless an extension is provided at the request of the Individual/Entity by Department staff per a Closure Plan Approval Letter. The Department has assessed a total civil penalty in the amount of nine thousand eight hundred dollars (\$9,800.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of nine thousand eight hundred dollars (**\$9,800.00**) should any requirement of the Order not be met.

Update: None

BUREAU OF AIR QUALITY

27) Order Type and Number: Consent Order 23-008-A
Order Date: June 6, 2023
Individual/Entity: **John David Weir III and Creative Scapes, LLC**

Facility: N/A
Location: 3105 Highway 72-221 East
Greenwood, SC 29469
Mailing Address: Same
County: Greenwood
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: S.C. Code Ann. Regs 61-62.2, *Prohibition of Open Burning*

Summary: Mr. John David Weir III (Individual/Entity) is the owner of record for property located in Greenwood County, South Carolina (“Site”). Creative Scapes is a landscaping company located at the Site and operated by Mr. Weir. On July 24, 2021, the Department conducted an investigation in response to a complaint of open burning. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: burned materials other than those allowed by Section I of the Open Burning Regulations, specifically land clearing debris generated off-site.

Action: The Individual/Entity is required to: henceforth cease all open burning except as permitted by the regulations. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (**\$1,000.00**) by July 6, 2023.

Update: The Individual/Entity has paid the civil penalty.

28) Order Type and Number: Consent Order 23-010-A
Order Date: June 28, 2023
Individual/Entity: **Edisto Shellfish/Lee Taylor**
Facility: Edisto Shellfish
Location: 4000 Faber Place Drive, Suite 300
North Charleston, SC 29438
Mailing Address: 7448 Ethel Post Office Road
Meggett, SC 29449
County: Charleston
Previous Orders: None
Permit/ID Number: None
Violations Cited: S.C. Code Ann. Regs 61-62.2, *Prohibition of Open Burning*

Summary: Edisto Shellfish is the owner of record for property located in Charleston County, South Carolina (“Site”). On November 15, 2021, a Department inspector conducted an investigation in response to a complaint of open burning at the Site. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: burned materials specifically commercial waste that includes portions of a treated wood or fiberglass boat and plastic fencing.

Action: The Individual/Entity is required to henceforth cease all open burning at the site except which is allowed under the regulations. The Department has assessed a total civil penalty in the amount of seven thousand dollars (\$7,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of seven thousand dollars (**\$7,000.00**) should any requirement of the Order not be met.

Update: None.

29) Order Type and Number: Consent Order 23-011-A
Order Date: June 28, 2023
Individual/Entity: **Ladson Wood Recycling, LLC**
Facility: Ladson Wood Recycling, LLC
Location: 9421 Highway 78
Ladson, SC 29469
Mailing Address: 3105 Highway 72-221 East
Ladson, SC 29456
County: Berkeley
Previous Orders: None
Permit/ID Number: None
Violations Cited: S.C. Code Ann. Regs 61-62.2, *Prohibition of Open Burning*

Summary: Ladson Wood (Individual/Entity) is a land clearing business located in Berkeley County, South Carolina. On August 12, 2021, and March 1, 2022, a Department inspector conducted an investigation in response to a complaint of open burning. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: burned materials, specifically solid wastes, including plastic, cardboard, polystyrene foam and household waste.

Action: The Individual/Entity is required to: immediately and henceforth cease all open burning except as in compliance the regulations. The Department has assessed a total civil penalty in the amount of ten thousand dollars (\$10,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of ten thousand dollars (**\$10,000.00**) should any requirement of the Order not be met.

Update: None.

BUREAU OF ENVIRONMENTAL HEALTH SERVICES

On-Site Wastewater Enforcement

30) Order Type and Number: Administrative Order 23-045-OSWW
Order Date: May 18, 2023
Individual/Entity: **Gene Pukhalsky**
Facility: Gene Pukhalsky
Location: 407 Hickory Nut Drive
Inman, SC 29349
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Gene Pukhalsky (Individual/Entity) owns property located in Spartanburg County, South Carolina. The Department conducted a review of Department records prior to February 2, 2023, and determined that no Approval to Operate was issued for the site. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: allowing a dwelling unit, building, business, or other structure to be occupied more than two hours per day without an approved method for the treatment and disposal of domestic wastewater.

Action: The Individual/Entity is required to apply for an OSWW system within five (5) days and install the OSWW system within ten (10) days of issuance of a permit to effectively stop the use of the installed unapproved OSWW system; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

31) <u>Order Type and Number:</u>	Administrative Order 23-046-OSWW
<u>Order Date:</u>	May 18, 2023
<u>Individual/Entity:</u>	Aleksander Kashtannikova and Yevgeniya Kashtannikova
<u>Facility:</u>	Aleksander Kashtannikova and Yevgeniya Kashtannikova
<u>Location:</u>	403 Hickory Nut Drive Inman, SC 29349
<u>Mailing Address:</u>	Same
<u>County:</u>	Spartanburg
<u>Previous Orders:</u>	None
<u>Permit Number:</u>	None
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-56

Summary: Aleksander Kashtannikova and Yevgeniya Kashtannikova (Individual/Entity) own property located in Spartanburg County, South Carolina. The Department conducted a review of Department records before February 2, 2023, and determined that an Approval to Operate had not been issued for the site. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: allowing a dwelling unit, building, business, or other structure to be occupied more than two hours per day without an approved method for the treatment and disposal of domestic wastewater.

Action: The Individual/Entity is required to apply for an OSWW system within five (5) days and install the OSWW system within ten (10) days of issuance of a permit to effectively stop the use of the installed unapproved OSWW system; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

32) Order Type and Number: Administrative Order 23-049-OSWW
Order Date: May 30, 2023
Individual/Entity: **Grady T. Bell and Helen W. Bell**
Facility: Grady T. Bell and Helen W. Bell
Location: 269 Round Tree Road
Gaffney, SC 29340
Mailing Address: Same
County: Cherokee
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Grady T. Bell and Helen W. Bell (Individual/Entity) owns property located in Cherokee County, South Carolina. The Department conducted an investigation on November 18, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

33) Order Type and Number: Administrative Order 23-050-OSWW
Order Date: May 30, 2023
Individual/Entity: **Drufus Holder Jr. and Phyllis Holder**
Facility: Drufus Holder Jr. and Phyllis Holder
Location: 102 Matthews Court
Greenville, SC 29611
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Drufus Holder Jr. and Phyllis Holder (Individual/Entity) owns property located in Greenville County, South Carolina. The Department conducted an investigation on April 13, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite

Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

34)	<u>Order Type and Number:</u>	Administrative Order 23-051-OSWW
	<u>Order Date:</u>	May 30, 2023
	<u>Individual/Entity:</u>	Rex Residential Property Owner II, LLC
	<u>Facility:</u>	Rex Residential Property Owner II, LLC
	<u>Location:</u>	215 Blalock Road Boiling Springs, SC 29316
	<u>Mailing Address:</u>	1505 King Street Ext, Ste 100 North Charleston, SC 29405
	<u>County:</u>	Spartanburg
	<u>Previous Orders:</u>	None
	<u>Permit Number:</u>	None
	<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-56

Summary: Rex Residential Property Owner II, LLC (Individual/Entity) owns property located in Spartanburg County, South Carolina. The Department conducted an investigation on April 12, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

35)	<u>Order Type and Number:</u>	Administrative Order 23-052-OSWW
	<u>Order Date:</u>	May 30, 2023

Individual/Entity: **Horace Lee Manley and Mary Carolyn Manley**
Facility: Horace Lee Manley and Mary Carolyn Manley
Location: 226 Holder Street
Pickens, SC 29671
Mailing Address: Same
County: Pickens
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Horace Lee Manley and Mary Carolyn Manley (Individual/Entity) own property located in Pickens County, South Carolina. The Department conducted an investigation on April 14, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

36) Order Type and Number: Administrative Order 23-055-OSWW
Order Date: May 30, 2023
Individual/Entity: **Jeff Collins**
Facility: Jeff Collins
Location: 4203 Old Easley Bridge Road
Greenville, SC 29642
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Jeff Collins (Individual/Entity) owns property located in Greenville County, South Carolina. The Department conducted an investigation on February 15, 2023, and observed buildings occupied for more than two (2) hours per day without an approved means of domestic wastewater treatment and disposal. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no building or unit is occupied for more than two (2) hours per day without an approved means of domestic wastewater treatment and disposal.

Action: The Individual/Entity is required to apply for a permit to construct an OSWW system within five (5) days and install the permitted OSWW system within ten (10) days of the issuance of the permit, or immediately vacate the buildings or units. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On July 27, 2023, the case was referred to the Department's legal counsel.

37) Order Type and Number: Administrative Order 23-056-OSWW
Order Date: May 30, 2023
Individual/Entity: **Maria Rodriguez and Isaac Arriaga**
Facility: Maria Rodriguez and Isaac Arriaga
Location: 640 Cassidy Road
Gaston, SC 29053
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Maria Rodriguez and Isaac Arriaga (Individual/Entity) own property located in Lexington County, South Carolina. The Department conducted an investigation on May 5, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

38) Order Type and Number: Administrative Order 23-057-OSWW
Order Date: May 30, 2023
Individual/Entity: **Larry Patton**
Facility: Larry Patton
Location: 1606 E Lakewood Drive
Rock Hill, SC 29732
Mailing Address: Same
County: York

Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Larry Patton (Individual/Entity) owns property located in York County, South Carolina. The Department conducted an investigation on April 20, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

39) Order Type and Number: Administrative Order 23-058-OSWW
Order Date: May 30, 2023
Individual/Entity: **Ronald Ehrenkauf**
Facility: Ronald Ehrenkauf
Location: 108 Birdie Lane
Fountain Inn, SC 29644
Mailing Address: Same
County: Laurens
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Ronald Ehrenkauf (Individual/Entity) owns property located in Laurens County, South Carolina. The Department conducted an investigation on May 4, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On July 25, 2023, the case was referred to the Department's legal counsel.

* Unless otherwise specified, "Previous Orders" as listed in this report include orders issued by Environmental Affairs Programs within the last five (5) years.

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL


August 10, 2023

() ACTION/DECISION
(X) INFORMATION

- I. TITLE:** Public Health Administrative and Consent Orders.
- II. SUBJECT:** Public Health Administrative Orders and Consent Orders for the period of June 1, 2023, through June 30, 2023.
- III. FACTS:** For the period of June 1, 2023, through June 30, 2023, Public Health reports 0 Administrative Orders and 26 Consent Orders totaling \$28,050 in assessed civil penalties.

Permit Type	Administrative Orders	Consent Orders	Assessed Civil Penalties
Retail Food Establishments	0	26	\$28,050

Submitted By:


Bentley P. White
Policy Director
Public Health

PUBLIC HEALTH ENFORCEMENT REPORT
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

August 10, 2023

CONSENT ORDERS (26)

- 1) **Order Type and Number:** Consent Order 23-104-FOOD
Order Date: June 1, 2023
Individual/Entity: **Hampton Inn and Suites**
Facility: Hampton Inn and Suites
Location: 1011 E. North 1st Street, Seneca, SC 29678
County: Oconee
Previous Orders: None
Permit Number: 37-206-01164

Summary: The Department conducted an inspection on March 31, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 2) **Order Type and Number:** Consent Order 23-119-FOOD
Order Date: June 1, 2023
Individual/Entity: **Stop N Go #4**
Facility: Stop N Go #4
Location: 103 Greenville Street, Williamston, SC 29697
County: Anderson
Previous Orders: None
Permit Number: 04-206-04304

Summary: The Department conducted an inspection on May 1, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 3) **Order Type and Number:** Consent Order 23-47-FOOD
Order Date: June 1, 2023
Individual/Entity: **Moe's Southwest Grill**
Facility: Moe's Southwest Grill
Location: 181 Brookton Circle, Myrtle Beach, SC 29588
County: Horry
Previous Orders: 2019-206-06-151 (\$800.00)
Permit Number: 26-206-12655

Summary: The Department conducted inspections on February 1, 2023, February 10, 2023, and February 17, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests.

Action: The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00).

Previous Orders: The previous Consent Order (2019-206-06-151) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked.

- 4) Order Type and Number: Consent Order 23-110-FOOD
Order Date: June 1, 2023
Individual/Entity: **Inlet Sports Lodge**
Facility: Inlet Sports Lodge
Location: 4601 Highway 17 Business, Murrells Inlet, SC 29576
County: Georgetown
Previous Orders: None
Permit Number: 22-206-06213

Summary: The Department conducted inspections on February 7, 2022, February 7, 2023, and February 17, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 5) Order Type and Number: Consent Order 23-111-FOOD
Order Date: June 1, 2023
Individual/Entity: **Carolina Ale House**
Facility: Carolina Ale House
Location: 2915 Hollywood Drive, Myrtle Beach, SC 29577
County: Horry
Previous Orders: None
Permit Number: 26-206-13495

Summary: The Department conducted inspections on October 10, 2022, March 15, 2023, and March 24, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 6) Order Type and Number: Consent Order 23-14-FOOD
Order Date: June 1, 2023
Individual/Entity: **Dem Boyz Cooking**
Facility: Dem Boyz Cooking
Location: 1611 Sunset Lane, Pamplico, SC 29583
County: Florence
Previous Orders: None
Permit Number: Operating Without a Permit

Summary: The Department conducted an investigation on January 12, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: provided food to the public without a valid permit issued by the Department.

Action: The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00).

- 7) Order Type and Number: Consent Order 23-112-FOOD
Order Date: June 1, 2023
Individual/Entity: **TGI Friday's #745**
Facility: TGI Friday's #745
Location: 500 Highway 17 North, North Myrtle Beach, SC 29582
County: Horry
Previous Orders: None
Permit Number: 26-206-14483

Summary: The Department conducted inspections on May 4, 2022, May 13, 2022, October 17, 2022, and February 14, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 8) Order Type and Number: Consent Order 23-123-FOOD
Order Date: June 1, 2023
Individual/Entity: **Imperial Grill 3517, Inc.**
Facility: Imperial Grill 3517, Inc.
Location: 3517 Clemson Boulevard, Anderson, SC 29621
County: Anderson
Previous Orders: None
Permit Number: 04-206-04430

Summary: The Department conducted inspections on October 4, 2021, October 7, 2021, August 24, 2022, February 27, 2023, and March 6, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; failed to ensure written procedures were in place and made available to the Department when the facility uses time as a public health control; and failed to maintain the premises free of insects, rodents, and other pests.

Action: The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 9) Order Type and Number: Consent Order 23-128-FOOD
Order Date: June 5, 2023
Individual/Entity: **L.O.A.D.S. of Flavour**
Facility: L.O.A.D.S. of Flavour
Location: 5010 Monticello Road, Columbia, SC 29203
County: Richland
Previous Orders: None
Permit Number: 40-204-08993

Summary: The Department conducted an inspection on May 5, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00).

- 10) Order Type and Number: Consent Order 23-133-FOOD
Order Date: June 5, 2023
Individual/Entity: **California Tortilla**
Facility: California Tortilla
Location: 1405 Folly Road, Suite 502, Charleston, SC 29412
County: Charleston
Previous Orders: None
Permit Number: 10-206-12380

Summary: The Department conducted inspections on March 29, 2023, April 7, 2023, and April 17, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and failed to provide a written plan for the restriction, exclusion and reinstatement of food employees when they have symptoms and/or diseases that are transmissible through food.

Action: The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00).

11) Order Type and Number: Consent Order 23-109-FOOD
Order Date: June 5, 2023
Individual/Entity: **Fox on the Run Catering**
Facility: Fox on the Run Catering
Location: 1090 Woodrow Lane, Loris, SC 29569
County: Horry
Previous Orders: None
Permit Number: Operating Without a Permit

Summary: The Department conducted an investigation on April 8, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: provided food to the public without a valid permit issued by the Department.

Action: The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00).

12) Order Type and Number: Consent Order 23-131-FOOD
Order Date: June 5, 2023
Individual/Entity: **Hand Farm Market**
Facility: Hand Farm Market
Location: 6951 Highway 90, Longs, SC 29568
County: Horry
Previous Orders: None
Permit Number: Operating Without a Permit

Summary: The Department conducted an investigation on April 27, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: provided food to the public without a valid permit issued by the Department.

Action: The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00).

13) Order Type and Number: Consent Order 23-113-FOOD
Order Date: June 5, 2023
Individual/Entity: **Kings Sushi**
Facility: Kings Sushi
Location: 112 Highway 17 North, Surfside Beach, SC 29575
County: Horry
Previous Orders: 22-264-FOOD (\$1,000.00)
22-329-FOOD (\$2,250.00)
Permit Number: 26-206-13054

Summary: The Department conducted inspections on September 26, 2022, November 21, 2022, and March 27, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; failed to ensure that each handwashing sink or group of two (2) adjacent handwashing sinks was provided with a supply of hand cleaning, liquid, powder or bar soap; failed to ensure that food was safe, unadulterated, and honestly presented; failed to

properly cool cooked time/temperature control for safety foods; and failed to use effective methods to cool cooked time/temperature control for safety foods.

Action: The Department has assessed a total civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (22-264-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked.

The previous Consent Order (22-329-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; by failing to properly cool cooked time/temperature control for safety foods; by failing to use effective methods to cool cooked time/temperature control for safety foods; and by failing to ensure that food was safe, unadulterated, and honestly presented.

14) Order Type and Number: Consent Order 23-114-FOOD
Order Date: June 8, 2023
Individual/Entity: **Casa Calamari**
Facility: Casa Calamari
Location: 1900 Highway 17 North, Surfside Beach, SC 29575
County: Horry
Previous Orders: None
Permit Number: 26-206-13842

Summary: The Department conducted inspections on May 19, 2022, November 4, 2022, March 21, 2023, and March 31, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department; and failed to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked.

Action: The Department has assessed a total civil penalty in the amount of one thousand three hundred dollars (\$1,300.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand three hundred dollars (\$1,300.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

15) Order Type and Number: Consent Order 23-129-FOOD
Order Date: June 14, 2023
Individual/Entity: **Verde WA LLC**
Facility: Verde WA LLC
Location: 13 Magnolia Road, Charleston, SC 29407
County: Charleston
Previous Orders: None
Permit Number: 10-206-09670

Summary: The Department conducted inspections on April 5, 2023, April 14, 2023, and April 24, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of five hundred fifty dollars (\$550.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred fifty dollars (\$550.00).

16) Order Type and Number: Consent Order 23-108-FOOD
Order Date: June 14, 2023
Individual/Entity: **ACM Fatz VII, LLC D/B/A Fatz**
Facility: ACM Fatz VII, LLC D/B/A Fatz
Location: 3575 St. Matthews Road, Orangeburg, SC 29118
County: Orangeburg
Previous Orders: 22-308-FOOD (\$1,600.00)
Permit Number: 38-206-02763

Summary: The Department conducted inspections on April 6, 2023, and April 13, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (22-308-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

17) Order Type and Number: Consent Order 23-127-FOOD
Order Date: June 14, 2023
Individual/Entity: **Subway**
Facility: Subway
Location: 120 B Dorman Commerce Drive, Spartanburg, SC 29301
County: Spartanburg
Previous Orders: None
Permit Number: 42-206-06234

Summary: The Department conducted inspections on November 5, 2021, August 30, 2022, September 9, 2022, and April 14, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Department has entered into a payment plan with the Individual/Entity for the civil penalty.

- 18) Order Type and Number: Consent Order 23-140-FOOD
Order Date: June 14, 2023
Individual/Entity: **Hardee's/Red Burrito #1505326**
Facility: Hardee's/Red Burrito #1505326
Location: 102 Highway 2 Bypass, Anderson, SC 29624
County: Anderson
Previous Orders: None
Permit Number: 04-206-02784

Summary: The Department conducted inspections on March 21, 2023, March 28, 2023, and April 3, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep equipment food contact surfaces and utensils clean to sight and touch.

Action: The Department has assessed a total civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity shall pay a civil penalty in the amount of four hundred dollars (\$400.00).

- 19) Order Type and Number: Consent Order 23-124-FOOD
Order Date: June 14, 2023
Individual/Entity: **T W Boon's**
Facility: T W Boon's
Location: 405 Main Street, Greenwood, SC 29646
County: Greenwood
Previous Orders: 22-193-FOOD (\$800.00)
22-250-FOOD (\$2,000.00)
Permit Number: 23-206-01680

Summary: The Department conducted an inspection on March 1, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees wash hands after engaging in activities that contaminate their hands.

Action: The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Department has entered into a payment plan with the Individual/Entity for the civil penalty.

Previous Orders: The previous Consent Order (22-193-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to maintain the premises free of insects, rodents, and other pests.

The previous Consent Order (22-250-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure employees wash hands after engaging in activities that contaminate their hands; and by failing to ensure that the handwashing sinks were accessible at all times.

20) Order Type and Number: Consent Order 23-135-FOOD
Order Date: June 16, 2023
Individual/Entity: **La Fogata**
Facility: La Fogata
Location: 2805 Sunset Boulevard, Suite D, West Columbia, SC 29169
County: Richland
Previous Orders: None
Permit Number: 32-206-06794

Summary: The Department conducted inspections on October 25, 2022, February 27, 2023, February 28, 2023, April 25, 2023, and May 2, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep equipment food contact surfaces and utensils clean to sight and touch; failed to properly cool cooked time/temperature control for safety foods; failed to use effective methods to cool cooked time/temperature control for safety foods; and failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of one thousand eight hundred dollars (\$1,800.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand eight hundred dollars (\$1,800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

21) Order Type and Number: Consent Order 23-136-FOOD
Order Date: June 16, 2023
Individual/Entity: **Little Caesars**
Facility: Little Caesars
Location: 2801 South Main Street, Anderson, SC 29624
County: Anderson
Previous Orders: None
Permit Number: 04-206-04466

Summary: The Department conducted inspections on February 10, 2023, February 13, 2023, February 21, 2023, February 27, 2023, and March 6, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep equipment food contact surfaces and utensils clean to sight and touch; and failed to provide water at a temperature of at least 100°F through a mixing valve or combination faucet at the handwashing sink(s).

Action: The Department has assessed a total civil penalty in the amount of one thousand two hundred dollars (\$1,200.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand two hundred dollars (\$1,200.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

22) Order Type and Number: Consent Order 23-64-FOOD
Order Date: June 19, 2023
Individual/Entity: **Arvind Patel**
Facility: Crispy Crunchy
Location: 2700 Williamsburg County Highway, Greeleyville, SC 29056
County: Williamsburg
Previous Orders: None
Permit Number: 45-206-00383

Summary: The Department conducted inspections on July 1, 2022, September 22, 2022, September 28, 2022, February 23, 2023, March 1, 2023, and March 9, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; failed to ensure food contact surfaces and utensils were cleaned; failed to ensure that nonfood-contact surfaces are free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance; failed to keep food contact surfaces of cooking equipment and pans free of encrusted grease deposits and other soil accumulations and non-food contact surfaces clean and free of accumulation of dust, dirt, food residue, and other debris; and failed to meet the lighting intensity as measured by foot candles throughout specific areas of the facility.

Action: The Department has assessed a total civil penalty in the amount of two thousand four hundred dollars (\$2,400.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand four hundred dollars (\$2,400.00). The Individual/Entity has paid the civil penalty in full.

- 23) Order Type and Number: Consent Order 23-144-FOOD
Order Date: June 21, 2023
Individual/Entity: **Fyre Pizza Company**
Facility: Fyre Pizza Company
Location: 148 Civic Center Boulevard, Anderson, SC 29625
County: Anderson
Previous Orders: None
Permit Number: 04-206-04624

Summary: The Department conducted inspections on May 15, 2023, May 24, 2023, and May 25, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

- 24) Order Type and Number: Consent Order 23-153-FOOD
Order Date: June 21, 2023
Individual/Entity: **Golden Kitchen**
Facility: Golden Kitchen
Location: 820 Surfside Drive, Surfside Beach, SC 29575
County: Horry
Previous Orders: None
Permit Number: 26-206-14034

Summary: The Department conducted inspections on November 7, 2022, January 5, 2023, and May 1, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly cool cooked time/temperature control for safety foods; and failed to use effective methods to cool cooked time/temperature control for safety foods.

Action: The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

25) Order Type and Number: Consent Order 23-53-FOOD
Order Date: June 21, 2023
Individual/Entity: **Circle K #5386**
Facility: Circle K #5386
Location: 114 Sea Island Parkway, Lady's Island, SC 29907
County: Beaufort
Previous Orders: None
Permit Number: 07-206-01549

Summary: The Department conducted inspections on October 25, 2022, January 6, 2023, February 7, 2023, March 2, 2023, and March 10, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests.

Action: The Department has assessed a total civil penalty in the amount of one thousand two hundred dollars (\$1,200.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand two hundred dollars (\$1,200.00).

26) Order Type and Number: Consent Order 23-172-FOOD
Order Date: June 30, 2023
Individual/Entity: **Fatz**
Facility: Fatz
Location: 1302 Montague Avenue, Greenwood, SC 29649
County: Greenwood
Previous Orders: 22-09-FOOD (\$800.00)
22-230-FOOD (\$2,500.00)
Permit Number: 24-206-03159

Summary: The Department conducted an inspection on June 13, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00).

Previous Orders: The previous Consent Order (22-09-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to convey sewage to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

The previous Consent Order (22-230-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and by failing to keep equipment food contact surfaces and utensils clean to sight and touch.

Date: August 10, 2023

To: S.C. Board of Health and Environmental Control

From: Bureau of Air Quality

Re: Public Hearing for Notice of Final Regulation Amending R.61-62, *Air Pollution Control Regulations and Standards*, Document No. 5188

I. Introduction

The Bureau of Air Quality (Bureau) proposes the attached Notice of Final Regulation amending R.61-62, *Air Pollution Control Regulations and Standards*, and the State Implementation Plan (SIP) for publication in the August 25, 2023, *South Carolina State Register* (“*State Register*”). Legal authority for these amendments resides in the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 *et seq.* (Pollution Control Act), which authorizes the Department of Health and Environmental Control (Department) to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as they are for compliance with federal law. The amendments will take legal effect as of the August 25, 2023, publication in the *State Register*.

II. Facts

1. Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.
2. The U.S. Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments at 40 CFR Parts 60, 63, and 97 include revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, and Cross-State Air Pollution Rule (CSAPR) Trading Programs.
3. The Department is amending R.61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, and R.61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, to incorporate by reference federal amendments promulgated from January 1, 2022, through December 31, 2022.
4. The Department is also amending R.61-62.97, *Cross-State Air Pollution Rule (CSAPR) Trading Program*, and the SIP, to incorporate by reference recently promulgated federal amendments to the CSAPR NO_x Annual Trading Program (found in 40 CFR Part 97, Subpart AAAAA) and the CSAPR SO₂ Group 2 Trading Program (found in 40 CFR Part 97, Subpart DDDDD) as necessary to maintain compliance with federal law.
5. The Department is also making other changes to R.61-62, *Air Pollution Control Regulations and Standards*, as deemed necessary to maintain compliance with federal law. These changes include corrections and other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement to the text of R.61-62.

6. The Department had a Notice of Drafting published in the March 24, 2023, *State Register*. The Bureau also had the Notice of Drafting published on the Department's Regulatory Information website in the *DHEC Monthly Regulation Development Update*. The Bureau sent a copy of the Notice of Drafting to interested stakeholders via Department email list on March 24, 2023. The Department received no public comments by the April 24, 2023, close of the public comment period.

7. Appropriate Department staff conducted an internal review of the proposed amendments on April 20, 2023.

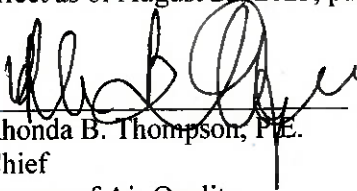
8. Upon receiving approval during the May 11, 2023, Board meeting, the Bureau had a Notice of Proposed Regulation published in the May 26, 2023, *State Register*. The Bureau also had the Notice of Proposed Regulation published on the Department's Regulatory Information website in the *DHEC Monthly Regulation Development Update*. The Bureau sent a copy of the Notice of Proposed Regulation to interested stakeholders via Department email list on May 26, 2023. The Department received no public comments by the June 26, 2023, close of the public comment period.


9. South Carolina industries are already subject to national air quality standards, New Source Performance Standards (NSPS), NESHAP, and CSAPR requirements as a matter of federal law. The Department must incorporate amendments to the federal NSPS and NESHAP because the EPA has delegated South Carolina authority for implementation and enforcement of these federal regulations. Additionally, the Department is required to incorporate amendments to the federal CSAPR regulations to address transport SIP requirements pursuant to 42 U.S.C. Section 7410. Thus, there will be no increased cost to the state or its political subdivisions resulting from adoption of these federal amendments beyond those mandated by federal law. South Carolina is already reaping the environmental benefits of these amendments.

10. In accordance with S.C. Code Section 1-23-120(H)(1), legislative review is not required because the Department is promulgating the amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement is required.

III. Request for Approval

The Bureau of Air Quality respectfully requests the Board to find need and reasonableness of the attached proposed amendment of R.61-62, *Air Pollution Control Regulations and Standards*, and the SIP, for legal effect as of August 25, 2023, publication in the *State Register*.


Rhonda B. Thompson, P.E.
Chief
Bureau of Air Quality


Myra C. Reece
Director
Environmental Affairs

Attachments:

A. Notice of Final Regulation

ATTACHMENT A

**STATE REGISTER NOTICE OF FINAL REGULATION
FOR R.61-62, AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

August 10, 2023

Document No. 5188

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards.

Synopsis:

Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department of Health and Environmental Control (Department) must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

The U.S. Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments at 40 CFR Parts 60, 63, and 97 include revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, and Cross-State Air Pollution Rule (CSAPR) Trading Programs.

The Department is amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference federal amendments promulgated from January 1, 2022, through December 31, 2022.

The Department is also amending R.61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, and the State Implementation Plan (SIP), to incorporate by reference recently promulgated federal amendments to the CSAPR NO_x Annual Trading Program (found in 40 CFR Part 97, Subpart AAAAA) and the CSAPR SO₂ Group 2 Trading Program (found in 40 CFR Part 97, Subpart DDDDD) as necessary to maintain compliance with federal law.

The Department is also making other changes to R.61-62, Air Pollution Control Regulations and Standards, for overall quality of regulatory text as deemed necessary to maintain compliance with federal law. These changes include corrections and other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement to the text of R.61-62.

The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department promulgates these amendments for compliance with federal law.

The Department had a Notice of Drafting published in the March 24, 2023, South Carolina State Register.

Section-by-Section Discussion of Amendments:

Section	Type of Change	Purpose
R.61-62.60		
Subpart XXX	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart IIII	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart JJJJ	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
R.61-62.63		
Subpart C	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart AAAA	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart YYYY	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart ZZZZ	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart DDDDD	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart GGGGG	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart IIIII	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
Subpart HHHHHH	Revision	Amended to incorporate federal revisions by reference for compliance with federal law.
R.61-62.97		
Subpart A	Revision Technical Correction	Amended to incorporate federal revisions by reference for compliance with federal law, and to correct punctuation.
Subpart B	Revision Technical Correction	Amended to incorporate federal revisions by reference for compliance with federal law, and to correct punctuation.

Instructions:

Amend R.61-62 pursuant to each individual instruction provided with the text of the amendments below.

~~Indicates Matter Stricken~~
Indicates New Matter

Text:

61-62. Air Pollution Control Regulations and Standards.

Statutory Authority: 1976 Code Section(s) 48-1-10 et seq.

61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards.

Regulation 61-62.60, Subpart XXX, shall be revised as follows:

Subpart XXX - “Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014”

The provisions of 40 CFR Part 60 Subpart XXX, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart XXX			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 81	August 29, 2016	[81 FR 59332]
Revision	Vol. 85	March 26, 2020	[85 FR 17244]
Revision	Vol. 85	October 7, 2020	[85 FR 63394]
<u>Revision</u>	<u>Vol. 87</u>	<u>February 14, 2022</u>	<u>[87 FR 8197]</u>

Regulation 61-62.60, Subpart III, shall be revised as follows:

Subpart III - “Standards of Performance for Stationary Compression Ignition Internal Combustion Engines”

The provisions of 40 CFR Part 60 Subpart III, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart III			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 71	July 11, 2006	[71 FR 39154]
Revision	Vol. 76	June 28, 2011	[76 FR 37954]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 81	July 7, 2016	[81 FR 44212]
Revision	Vol. 85	December 4, 2020	[85 FR 78412]
Revision	Vol. 86	June 29, 2021	[86 FR 34308]
<u>Revision</u>	<u>Vol. 87</u>	<u>August 10, 2022</u>	<u>[87 FR 48603]</u>

Regulation 61-62.60, Subpart JJJJ, shall be revised as follows:

Subpart JJJJ - “Standards of Performance for Stationary Spark Ignition Internal Combustion Engines”

The provisions of 40 CFR Part 60 Subpart JJJJ, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart JJJJ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	October 8, 2008	[73 FR 59034]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 85	October 7, 2020	[85 FR 63394]
Revision	Vol. 85	December 4, 2020	[85 FR 78412]
Revision	Vol. 86	June 29, 2021	[86 FR 34308]
Revision	Vol. 87	August 10, 2022	[87 FR 48603]

61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

Regulation 61-62.63, Subpart C, shall be revised as follows:

Subpart C - “List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List”

The provisions of 40 CFR Part 63 Subpart C, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart C			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 61	June 18, 1996	[61 FR 30816]
Revision	Vol. 65	August 2, 2000	[65 FR 37342]
Revision	Vol. 69	November 29, 2004	[69 FR 69320]
Revision	Vol. 70	December 19, 2005	[70 FR 75047]
Revision	Vol. 87	January 5, 2022	[87 FR 393]

Regulation 61-62.63, Subpart AAAA, shall be revised as follows:

Subpart AAAA - “National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills”

The provisions of 40 CFR Part 63 Subpart AAAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by

reference as if fully repeated herein.

40 CFR Part 63 Subpart AAAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 68	January 16, 2003	[68 FR 2227]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 85	March 26, 2020	[85 FR 17244]
Revision	Vol. 85	October 13, 2020	[85 FR 64398]
Revision	Vol. 87	February 14, 2022	[87 FR 8197]

Regulation 61-62.63, Subpart YYYY, shall be revised as follows:

Subpart YYYY - “National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines”

The provisions of 40 CFR Part 63 Subpart YYYY, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart YYYY			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 69	March 5, 2004	[69 FR 10512]
Revision	Vol. 69	August 18, 2004	[69 FR 51184]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 85	March 9, 2020	[85 FR 13524]
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
Revision	Vol. 87	March 9, 2022	[87 FR 13183]

Regulation 61-62.63, Subpart ZZZZ, shall be revised as follows:

Subpart ZZZZ - “National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines”

The provisions of 40 CFR Part 63 Subpart ZZZZ, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart ZZZZ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 69	June 15, 2004	[69 FR 33474]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 75	March 3, 2010	[75 FR 9648]
Revision	Vol. 75	June 30, 2010	[75 FR 37732]
Revision	Vol. 75	August 20, 2010	[75 FR 51570]
Revision	Vol. 76	March 9, 2011	[76 FR 12863]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]

40 CFR Part 63 Subpart ZZZZ			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 78	March 6, 2013	[78 FR 14457]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
Revision	Vol. 85	December 4, 2020	[85 FR 78412]
Revision	Vol. 87	August 10, 2022	[87 FR 48603]

Regulation 61-62.63, Subpart DDDDD, shall be revised as follows:

Subpart DDDDD - “National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Industrial Boilers and Process Heaters”

The provisions of 40 CFR Part 63, Subpart DDDDD as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DDDDD			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	December 28, 2005	[70 FR 76918]
Revision	Vol. 71	April 20, 2006	[71 FR 20445]
Revision	Vol. 71	December 6, 2006	[71 FR 70651]
Revision	Vol. 76	March 21, 2011	[76 FR 15608]
Revision	Vol. 76	May 18, 2011	[76 FR 28662]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 80	November 20, 2015	[80 FR 72789]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
Revision	Vol. 85	December 28, 2020	[85 FR 84261]
Revision	Vol. 87	October 6, 2022	[87 FR 60816]

Regulation 61-62.63, Subpart GGGGG, shall be revised as follows:

Subpart GGGGG - “National Emission Standards for Hazardous Air Pollutants: Site Remediation”

The provisions of 40 CFR Part 63 Subpart GGGGG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart GGGGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 68	October 8, 2003	[68 FR 58172]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 71	November 29, 2006	[71 FR 69011]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 85	July 10, 2020	[85 FR 41680]

40 CFR Part 63 Subpart GGGGG			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
<u>Revision</u>	<u>Vol. 87</u>	<u>December 22, 2022</u>	<u>[87 FR 78545]</u>

Regulation 61-62.63, Subpart IIII, shall be revised as follows:

Subpart IIII - “National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants”

The provisions of 40 CFR Part 63 Subpart IIII, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart IIII			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 68	December 19, 2003	[68 FR 70904]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
Revision	Vol. 85	December 28, 2020	[85 FR 84261]
<u>Revision</u>	<u>Vol. 87</u>	<u>May 6, 2022</u>	<u>[87 FR 27002]</u>

Regulation 61-62.63, Subpart HHHHHH, shall be revised as follows:

Subpart HHHHHH - “National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources”

The provisions of 40 CFR Part 63 Subpart HHHHHH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart HHHHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 73	January 9, 2008	[73 FR 1738]
Revision	Vol. 73	February 13, 2008	[73 FR 8408]
Revision	Vol. 85	November 19, 2020	[85 FR 73854]
<u>Revision</u>	<u>Vol. 87</u>	<u>November 10, 2022</u>	<u>[87 FR 67791]</u>

61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program.

Regulation 61-62.97, Subpart A, Paragraph 1, shall be revised as follows:

1. Except as provided in paragraphs 2. and 3. of this subpart, the provisions of the July 1, 2016, edition of 40 CFR 97.402 through 97.408, 97.411 through 97.418, 97.420 through 97.428, and 97.430 through 97.435 ~~as amended at 81 FR 74604-07 (October 26, 2016)~~, as subsequently amended upon publication in the Federal Register as listed below, are adopted and incorporated by reference as if fully repeated herein.

40 CFR Part 97 Subpart AAAAA			
Federal Register Citation	Volume	Date	Notice
<u>Revision</u>	<u>Vol. 81</u>	<u>October 26, 2016</u>	<u>[81 FR 74504]</u>
<u>Revision</u>	<u>Vol. 86</u>	<u>April 30, 2021</u>	<u>[86 FR 23054]</u>
<u>Revision</u>	<u>Vol. 87</u>	<u>August 26, 2022</u>	<u>[87 FR 52473]</u>

Regulation 61-62.97, Subpart A, Paragraph 3, shall be revised as follows:

3. For purposes of this subpart, the provisions of 40 CFR 97.404(a)(1) and (b)(4) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in South Carolina (but not in Indian country within South Carolina’s borders)”.

Regulation 61-62.97, Subpart B, Paragraph 1, shall be revised as follows:

1. Except as provided in paragraphs 2. and 3. of this subpart, the provisions of the July 1, 2016, edition of 40 CFR 97.702 through 97.708, 97.711 through 97.718, 97.720 through 97.728, and 97.730 through 97.735 ~~as amended at 81 FR 74604-07 (October 26, 2016), as subsequently amended upon publication in the Federal Register as listed below,~~ are adopted and incorporated by reference as if fully repeated herein.

40 CFR Part 97 Subpart DDDDD			
Federal Register Citation	Volume	Date	Notice
<u>Revision</u>	<u>Vol. 81</u>	<u>October 26, 2016</u>	<u>[81 FR 74504]</u>
<u>Revision</u>	<u>Vol. 86</u>	<u>April 30, 2021</u>	<u>[86 FR 23054]</u>
<u>Revision</u>	<u>Vol. 87</u>	<u>August 26, 2022</u>	<u>[87 FR 52473]</u>

Regulation 61-62.97, Subpart B, Paragraph 3, shall be revised as follows:

3. For purposes of this subpart, the provisions of 40 CFR 97.704(a)(1) and (b)(4) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in South Carolina (but not in Indian country within South Carolina’s borders)”.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-62, Air Pollution Control Regulations and Standards.

Purpose: The EPA promulgated amendments to federal air quality regulations in 2022. The recent federal amendments include revisions to Standards of Performance for New Stationary Sources, mandated by 42 U.S.C. Section 7411, and revisions to federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, mandated by 42 U.S.C. Section 7412. In 2021 and 2022, the EPA also promulgated revisions to Cross-State Air Pollution Rule (CSAPR) Trading Programs, mandated by 42 U.S.C. Section 7410. The Department, therefore, amends R.61-62 and the SIP, as necessary, to incorporate these amendments to federal regulations. The Department also makes corrections for internal consistency, clarification, and codification to improve the overall text as necessary for compliance with federal law.

Legal Authority: 1976 Code Sections 48-1-10 et seq., and the Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416.

Plan for Implementation: The amendments will take legal effect upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendments. Additionally, a copy of the regulation will be posted on the Department's website, accessible at www.scdhec.gov/regulations-table. Printed copies may also be requested, for a fee, from the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The EPA promulgates amendments to its air quality regulations throughout each calendar year. Federal amendments in 2022 included revised Standards of Performance for New Stationary Sources and revised NESHAP for Source Categories. The Department adopts these federal amendments to maintain compliance with federal law, as the EPA has delegated South Carolina authority for implementation and enforcement of these federal regulations. In 2021 and 2022, the EPA also revised federal CSAPR Trading Programs regulations. Adoption of the federal CSAPR Trading Program revisions is necessary to address transport SIP requirements pursuant to 42 U.S.C. Section 7410. These amendments are reasonable, as they promote consistency and ensure compliance with both state and federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the state or its political subdivisions resulting from these revisions. The amendments adopted are already in effect and applicable to the regulated community as a matter of federal law, thus the amendments do not present a new cost to the regulated community. The amendments incorporate the revisions to the EPA regulations, which the Department implements pursuant to federal delegation and the authority granted by Section 48-1-50 of the Pollution Control Act. The amendments benefit the regulated community by clarifying and updating the regulations and improving their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the amendments to R.61-62 provides continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The state's authority to implement federal requirements, which are beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

(x) ACTION/DECISION
() INFORMATION

Date: August 10, 2023

To: S.C. Board of Health and Environmental Control

From: Bureau of Land and Waste Management

Re: Notice of Proposed Regulation Amending R.61-83, Transportation of Radioactive Waste Into or Within South Carolina.

I. Introduction

The Bureau of Land and Waste Management (“Bureau”) proposes the attached Notice of Proposed Regulation amending R.61-83, *Transportation of Radioactive Waste Into or Within South Carolina*, for publication in the August 25, 2023, *South Carolina State Register* (“*State Register*”). Legal authority resides in S.C. Code Sections 13-7-10 et seq., which directs the State to maintain appropriate liaison with agencies of the Federal Government, the United States Congress, certain national foundations and associations, and with other states and regional groups active in nuclear energy affairs. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

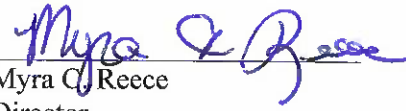
II. Facts

1. The Department requires compliance with all applicable provisions and current revisions of Title 10, Part 71 of the Code of Federal Regulations (10 CFR 71), and any disposal facility’s radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage, or delivery of radioactive materials. The Department proposes amending R.61-83 to incorporate 10 CFR 71 regulations promulgated in 2018, provide clarification for conformance with disposal site criteria, include an exemption allowance for consistency with R.61-63, *Radioactive Materials (Title A)*, and update forms to the current Department documents in use.
2. The Department had a Notice of Drafting published in the April 28, 2023, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. The Department received public comments from two (2) parties by the May 30, 2023, close of the public comment period. Attachment C presents a summary of these public comments received and Department responses.
3. Appropriate Department staff conducted an internal review of the proposed amendments on July 20, 2023.
4. The Bureau held a stakeholder meeting on August 2, 2023, to discuss the schedule and implementation process for the proposed amendments.

III. Request for Approval

The Bureau respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the August 25, 2023, *State Register*.


Henry Porter
Bureau Chief


Myra C. Reece
Director

Attachments:

- A. Notice of Proposed Regulation
- B. Notice of Drafting published in the April 28, 2023, *State Register*
- C. Summary of Public Comments Received and Department Responses

ATTACHMENT A

**STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR R.61-83, Transportation of Radioactive Waste Into or Within South Carolina**

August 10, 2023

Document No. _____

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: 1976 Code Sections 13-7-10 et seq.

61-83. Transportation of Radioactive Waste Into or Within South Carolina.

Preamble:

Pursuant to S.C. Code Sections 13-7-10 *et seq.*, the Department of Health and Environmental Control (“Department”) requires compliance with all applicable provisions and current revisions of Title 10, Part 71 of the Code of Federal Regulations (10 CFR 71), and any disposal facility’s radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage or delivery of radioactive materials. The Department proposes amending R.61-83 to incorporate 10 CFR 71 regulations promulgated in 2018, provide clarification for conformance with disposal site criteria, include an exemption allowance to be consistent with R.61-63, *Radioactive Materials (Title A)*, and update forms to the current Department documents in use. The proposed amendments may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Department had a Notice of Drafting published in the April 28, 2023, South Carolina State Register.

Section-by-Section Discussion of Proposed Amendment:

Section	Type of Change	Purpose
Statutory Authority	Addition	Added statutory authority for clarity.
Table of Contents	Reorganization	Updated to reflect proposed amendments to regulatory text.
Section 1		
1.2	Addition/Deletion	Cited Federal regulations adopted by reference.
Section 2		
2.1-2.2	Technical Correction	Corrected for punctuation.
2.11.1-2.11.2	Technical Correction, Revision	Corrected for punctuation and to clarify shipper reference.
Section 3		
3.1	Revision	Revise contact information and revise form number.
3.2, 3.2.3, 3.2.4	Technical Correction	Corrected for punctuation.
3.2.5	Technical Correction, Revision	Corrected for punctuation and to clarify shipper reference.

3.3	Revision	Amended to add criteria type.
3.5.1-3.5.2	Revision	Amended for stylistic clarity.
Section 4		
4.1	Revision	Amended for stylistic clarity.
4.1.1	Revision	Update form identification number.
4.1.2	Revision	Amended to clarify shipper reference.
4.2	Revision	Update form identification number.
4.3	Revision	Update form identification number.
4.4	Revision	Update form identification number.
Section 5		
5.1	Revision	Update form identification number.
5.1.1-5.1.2	Technical Correction	Corrected for punctuation.
5.1.3	Revision	Update form identification number.
5.2	Revision	Update form identification number.
5.3	Revision	Update form identification number.
Section 7		
7.1.1	Technical Correction	Corrected for misspelled word.
7.1.2	Revision	Amended for stylistic clarity and to clarify shipper reference.
7.2.1	Technical Correction	Corrected for punctuation.
7.2.2	Revision	Amended for stylistic clarity and to clarify shipper reference.
7.4	Revision	Amended for stylistic clarity.
Section 8 (new)	Addition	Included an exemption for consistency with R.61-63.
Section 9 (previous Section 8)	Technical Correction	Corrected for codification.
Attachments	Deletion	Removed forms from the regulations and indicate by reference source of forms.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendments to Lynne Garner of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; garnerld@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 25, 2023, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendments during its November 9, 2023, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC

Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agenda>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

Preliminary Fiscal Impact Statement:

None.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-83, Transportation of Radioactive Waste Into or Within South Carolina

Purpose: The Department proposes amending R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to incorporate the 2018 revisions to 10 CFR 71, and any disposal facility's radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage, or delivery of radioactive materials.

Legal Authority: 1976 Code Sections 13-7-10 et seq.

Plan for Implementation: The amendments will take legal effect upon Board approval and upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendment. In Addition, a copy of the regulation will be posted on the Department's website, accessible at www.scdhec.gov/regulations-table. For a fee, printed copies may also be requested, for a fee, from the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Adoption of the proposed amendments of R.61-83 enables compliance with federal regulations and standards.

DETERMINATION OF COSTS AND BENEFITS:

The proposed amendment will potentially relieve the burden to the regulated community by providing the ability to grant exemptions from the requirements of the regulation when authorized by law and when SCDHEC determines it will not result in undue hazard to public health and safety of property.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These proposed amendments will promote an effective regulatory program for radioactive material users under state jurisdiction, and protection of the public and workers from unnecessary exposure to ionizing radiation. These proposed changes will also provide updates to the transportation safety standards for radioactive materials.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The State's authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

The regulation was promulgated pursuant to Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, amending S.C. Code Ann. 13-7-10 *et seq.* of the South Carolina Atomic Energy and Radiation Control Act. The purpose of the regulation is to require written notification to the Department of shipments of radioactive waste by any shipper, carrier, or other person who transports such waste within the State's borders. An additional purpose of the regulation is to require that shippers of waste obtain adequate financial assurance and hold the State harmless in case of radiological injury or damage arising out of the transportation of the waste, and for the enforcement of transportation and disposal requirements of radioactive waste. This regulation applies to generators and shippers of radioactive waste, including, for example, nuclear power plants, waste brokers and processors, educational and government institutions, and research facilities.

Text:

~~Indicates Matter Stricken~~

Indicates New Matter

61-83. Transportation of Radioactive Waste Into or Within South Carolina.

Statutory Authority: S.C. Code Ann. Sections 13-7-10 et seq.

Table of Contents:

Section 1	Scope
Section 2	Definitions
Section 3	Permits
Section 4	Shipper's Requirements
Section 5	Carrier's Requirements
Section 6	Disposal Facility Operator
Section 7	Penalties
Section 8	<u>Exemptions from the Requirements of this Regulation</u>
Section 9	Severability Clause

Attachments:

~~Attachment I.....Form RHA-200P "Application for Radioactive Waste Transport Permit"~~

~~Attachment II.....Form RHA-PNC "Radioactive Waste Shipment Prior Notification and Manifest Form"~~

~~Attachment III.....Form RHA-CT "Radioactive Waste Shipment Certification Form"~~

1. SCOPE

1.1 This regulation applies to any shipper, carrier or other person who transports radioactive waste into or within this State, to any persons involved in the generation of radioactive waste within this State, and to any shipper whose radioactive waste is transported into or within this State or is delivered, stored, or disposed of within this State.

1.2 All persons subject to the provisions of this regulation shall comply with all applicable provisions of the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised ~~January 1, 2006~~ February 23, 2018, (with the exception of sections 71.2, 71.6, ~~71.11~~, 71.14(b), ~~71.17~~, 71.19, ~~71.21~~, ~~71.24~~, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, ~~71.70~~, 71.71, 71.73, 71.74, 71.75, 71.77, ~~71-85(a)-(c)~~, ~~71-91(b)-(d)~~, 71.99 and 71.100), ~~71.101(a)~~, ~~71.101(b)~~, ~~71.101(c)(1)~~, ~~71.101(c)(2)~~, ~~71.101(d)~~, ~~71.101(e)~~, ~~71.101(g)~~, 71.103(a), 71.106, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, and 71.135. ~~Regulation 61-83 of the 1976 Code of Laws of South Carolina, and any disposal facility radioactive material license requirements regarding the packaging, transportation, disposal, storage or delivery of radioactive materials.~~

2. DEFINITIONS

2.1 “Carrier” means any person transporting radioactive wastes into or within the State for storage, disposal, or delivery.

2.2 “Department” means the Department of Health and Environmental Control, including personnel authorized to act on behalf of the Department.

2.3 “Disposal facility” means any facility located within the State, which accepts radioactive waste for storage or disposal.

2.4 “Generation” means the act or process of producing radioactive waste.

2.5 “Manifest” means the document used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

2.6 “Operator” means every person who drives or is in actual physical control of a vehicle transporting radioactive waste.

2.7 “Persons” means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership or any other entity whatsoever.

2.8 “Permit” means an authorization issued by the Department to any person involved in the generation of radioactive waste, to transport such radioactive wastes or offer such waste for transport.

2.9 “Radioactive waste” means any and all equipment or materials, including irradiated nuclear reactor fuel, which are radioactive or have radioactive contamination and which are required pursuant to any governing laws, regulations, or licenses to be disposed of as radioactive waste.

2.10 “Radiological violation” means radioactive contamination or the emission of radiation in excess of applicable limits.

2.11 “Shipper” means any person, whether a resident of South Carolina or a non-resident:

2.11.1 who transfers radioactive waste to a carrier for transportation into or within the State; or;

2.11.2 who transports ~~his~~their own radioactive waste into or within the State; or;

2.11.3 who transfers radioactive waste to another person if such Waste is transported into or within the State.

2.12 “Transport” means the movement of radioactive wastes into or within South Carolina.

3. PERMITS

3.1 Before any shipper transports or causes to be transported radioactive waste into or within the State of South Carolina, the shipper shall purchase an annual radioactive waste transport permit from the Department. An application for a permit shall be submitted on Department Form ~~RHA-200P~~SCDHEC-0800 “Application for Radioactive Waste Transport Permit” together with the necessary fee to: ~~Chief, Bureau of Radiological Health, S.C. Department of Health and Environmental Control~~S.C. Department of Health and Environmental Control (SCDHEC), Bureau of Land and Waste Management/Radioactive Waste Management Section, 2600 Bull Street, Columbia, South Carolina, 29201. These forms are available on the Department website, or by other means the Department may provide.

3.2 Before a permit shall be issued, the shipper must deposit and maintain with the Department a cash or corporate surety bond in the amount of Five Hundred Thousand Dollars (\$500,000.00); or, provide to the Department satisfactory evidence of liability insurance.

3.2.1 For purposes of this regulation, liability insurance shall mean coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate, or as otherwise provided by State law.

3.2.2 Any insurance carried pursuant to Section 2210 of Title 42 of the United States Code and Part 140 of Title 10 of the Code of Federal Regulations shall be sufficient to meet the requirements of this section.

3.2.3 Liability insurance shall be specific to the packaging, transportation, disposal, storage, and delivery of radioactive waste.

3.2.4 Shippers maintaining liability insurance for the purpose of this regulation may provide to the Department a certificate of insurance from their insurer indicating the policy number, limits of liability, policy date, and specific coverage for packaging, transportation, disposal, storage, and delivery of radioactive materials.

3.2.5 A cash or corporate surety bond previously posted will be returned to the shipper upon notification to the Department in writing of his or her intention to cease shipments of radioactive waste into or within the State. Such bond will be returned after the last such shipment is accepted safely at its destination.

3.3 Each permit application shall include a certification to the Department that the shipper will comply fully with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions and waste acceptance criteria of the disposal facility regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

3.4 Each permit application shall include a certification that the shipper will hold the State of South Carolina harmless for all claims, actions, or proceedings in law or equity arising out of radiological injury or damage to persons or property occurring during the transportation of its radioactive waste into or within the State including all costs of defending the same; provided, however, that nothing contained herein shall be construed as a waiver of the State's sovereign immunity; and, further provided, that agencies of the State of South Carolina shall not be subject to the requirements of this provision.

3.5 Permit fees will be annually determined and assessed by the Department based on the following classifications:

3.5.1 Class X—more than an annual total of ~~75~~seventy-five cubic feet (75 ft.³) or more than ~~100~~one hundred curies (100 Ci) of radioactive waste for disposal within the State.

3.5.2 Class Y—an annual total of ~~75~~seventy-five cubic feet (75 ft.³) or less of radioactive waste consisting of ~~100~~one hundred curies (100 Ci) or less total activity for disposal within the State.

3.5.3 Class Z—any shipment of radioactive waste, which is not consigned for storage or disposal within the State, but which is transported into or within the State.

3.6 Permits will be valid from the date of issuance through December 31 of each calendar year. Permit fees are not refundable. Permits may be renewed by filing a new application with the Department.

4. SHIPPER'S REQUIREMENTS

4.1 Before any shipment of radioactive waste may be transported into or within the State, the shipper shall give written notice to the Department not less than seventy-two (72) hours nor more than thirty (30) calendar days before the expected date of arrival of the shipment or departure from the shipper's facility within the State as the case may be, except as provided in paragraph 4.1.3.

4.1.1 All prior notifications shall be filed on a Department form designated as ~~RHA-PNC~~SCDHEC-0802 "Radioactive Waste Shipment Prior Notification and Manifest Form."

4.1.2 The shipper shall immediately notify the Department of any cancellations or significant changes in the prior notification or manifest summary which may occur prior to the shipment departing ~~his~~the facility. For example, such changes include changes in date of arrival, carrier, route, waste description, curie content, volume, or waste classification.

4.1.3 For shipments consisting of ~~75~~seventy-five cubic feet (75 ft.³) or less containing one curie (1 Ci) of radioactive material or less which may be consigned as non-exclusive use shipments according to applicable U.S. Department of Transportation regulations, the requirement for prior notification contained in paragraph 4.1 is waived. Such shipments must otherwise comply with all other applicable requirements regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

4.2. The shipper shall provide to the carrier with each separate shipment a copy of the ~~RHA-PNC~~SCDHEC-0802 "Radioactive Waste Shipment Prior Notification and Manifest Form" required by paragraph 4.1. Such copy shall show any changes made pursuant to paragraph 4.1.2 above. Each shipper shall instruct the carrier to comply with the route and schedule contained therein.

4.3 The manifest accompanying each shipment of radioactive waste shall include a copy of the shipper's certification prepared on Department form ~~RHA-CT~~SCDHEC-0803, Part I, "Radioactive Waste Shipment Certification Form," which shall include certification that the shipment has been inspected and complies

with all applicable State and Federal laws and administrative rules and regulations, license or license conditions of the disposal facility regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

4.4 Following acceptance of each separate shipment at a disposal facility or at the consignee's facility, it shall be the responsibility of each shipper to provide to the Department for such shipment a copy of the Department form ~~RHA-PNC~~SCDHEC-0802 "Radioactive Waste Shipment Prior Notification and Manifest Form" with the Consignee Acknowledgement properly executed and to provide the Department with the "Radioactive Waste Shipment Certification Form," Department form ~~RHA-CT,~~ SCDHEC-0803 which accompanied that shipment.

5. CARRIER'S REQUIREMENTS

5.1 For each shipment of radioactive waste materials shipped into or within the State, a carrier shall complete Part II: Carrier's Certification on the form ~~RHA-CT~~SCDHEC-0803 provided by the ~~shipper~~generator. The certificate shall be signed by a principal, officer, partner, responsible employee, or other authorized agent of the carrier.

5.1.1 The carrier shall certify that the shipment is properly placarded for transport and that all shipping papers required by law and administrative rules and regulations have been properly executed; and,

5.1.2 that the transport vehicle has been inspected and meets the applicable requirements of the Federal government and the State of South Carolina, and that all safety and operational components are in good operative condition; and,

5.1.3 that the carrier has received a copy of the shipper's "Radioactive Waste Shipment Prior Notification and Manifest Form," form SCDHEC-0802 specified in paragraph 4.2 and the "Radioactive Waste Shipment Certification Form," form ~~RHA-CT~~SCDHEC-0803 specified in paragraph 4.3; and,

5.1.4 that the carrier shall comply fully with all applicable laws and administrative rules and regulations, both State and Federal, regarding the transportation of such waste.

5.2 A carrier shall immediately notify the Department of any variance, occurring after departure, from the primary route and estimated date of arrival of shipment as provided by the shipper on Form ~~RHA-PNC~~SCDHEC-0802.

5.3 The copies of Forms ~~RHA-CT~~SCDHEC-0803 and ~~RHA-PNC~~SCDHEC-0802 shall accompany the shipment to the destination and shall be presented together with the manifest and other shipping papers.

6. DISPOSAL FACILITY OPERATOR

6.1 Owners and operators of disposal facilities shall permanently record, and report to the Department within twenty-four (24) hours after discovery, all conditions in violation of the requirements of this regulation discovered as a result of inspections required by any license under which the facility is operated.

6.2 Prior to the receipt of radioactive wastes at a disposal facility in this State, the owners and operators of such facility shall notify each shipper of any special requirements, if any, in effect regarding the packaging, transportation, storage, disposal, or delivery of such wastes at that facility.

6.3 No owner or operator of a disposal facility located within this State shall accept radioactive waste for storage or disposal unless the shipper of such waste has a valid, unsuspended permit issued pursuant to this regulation.

7. PENALTIES

7.1 Any person who commits a radiological violation shall:

7.1.1 be fined not less ~~than~~ at least One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00); and,

7.1.2 if such person is a shipper, have his or her permit suspended for a period of not less than thirty (30) calendar days and until such time as he or she demonstrates to the Department's satisfaction that adequate measures have been taken to prevent reoccurrence of the violation.

7.2. Any person who commits a second radiological violation within twelve (12) months of the first such violation shall:

7.2.1 be fined not less than Five Thousand (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00); and,

7.2.2 if such person is a shipper, have his or her permit suspended for a period of not more than one (1) year and until such time as he or she demonstrates to the satisfaction of the Department that adequate measures have been taken to prevent reoccurrence of the violations.

7.3 Any person who commits a non-radiological violation of the provisions of this regulation shall be fined not more than One Thousand Dollars (\$1,000.00) for each violation; *provided*, that should the Department determine that a series of such violations has occurred, the Department shall suspend or revoke that person's permit for a period of not more than twelve (12) months.

7.4. Any person to whom an order, injunction, suspension, or fine issued under this article is directed shall comply therewith immediately, but on application to the Department, within twenty (20) calendar days after the date of the order, shall be afforded a hearing within thirty (30) calendar days of such application.

8. EXEMPTIONS FROM REQUIREMENTS OF THIS REGULATION

The Department may, upon application thereof or upon its own initiative, grant such exemptions or exceptions from the requirements of this regulation as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

8-9. SEVERABILITY CLAUSE

~~8-1~~It is hereby declared that each of the sections and provisions of this regulation are severable, if that any one or more of such sections are declared unconstitutional or invalid, the remaining sections and provisions of this regulation shall remain in effect.

ATTACHMENTS

~~Form RHA-200P
(10/80)~~

~~SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL APPLICATION
FOR RADIOACTIVE WASTE TRANSPORT PERMIT~~

Instructions: Complete Items 1 through 8. Submit original and one copy to Chief, Bureau of Radiological Health, S.C. Dept. of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. All copies must be signed and dated. Additional sheets may be used if necessary. Upon approval, the Department will return one copy with your transport permit. All permit fees should be made payable to the S.C. Dept. of Health and Environmental Control, Bureau of Finance, 2600 Bull Street, Columbia, S.C. 29201. Please note on remittance, "For Radioactive Waste Transport Permit."

Note: Radioactive Waste Transport Permits may be purchased for more than one facility or location of a company, corporation, etc. However, an application shall be submitted for each facility to include the additional fee and the required certificate of insurance or bond.

1. Name and Address of Applicant (Shipper):	2. Person responsible for Radioactive Waste shipment: —(a) Name: —(b) Title: —(c) Address: —(d) Telephone:
3. Locations from which waste will be shipped if application is for more than one facility. —(a) —(b)	4. NRC or Agreement State Radioactive Material License No. for each location. —(a) —(b)
5. Estimated Annual Cubic Footage.	6. Amount of permit fee remitted.

Information to be Submitted as Attachment

7. A Certificate of Liability Insurance shall be submitted as evidence of financial ability to protect the State of South Carolina and the public at large from possible radiological injury or damage due to packaging, transportation, disposal, storage, or delivery of radioactive waste. For those applicants not maintaining liability insurance, they must deposit and maintain with the Department a cash or corporate surety bond in the amount of Five Hundred Thousand Dollars (\$500,000.00).

CERTIFICATE

8. In compliance with Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, I hereby certify on behalf of the above named applicant (shipper) to the South Carolina Department of Health and Environmental Control that: (A) the above named applicant (shipper) will comply fully with all applicable laws and administrative rules and regulations, both State and Federal, and any disposal facility radioactive material license requirements regarding the packaging, transportation, storage, disposal, and delivery of such wastes; (B) the above named applicant (shipper) will hold the State of South Carolina harmless for all claims, actions, proceedings in law or equity arising out of radiological injury or damages to persons or property occurring during the transportation of its radioactive waste into or within the State including all costs defending same; provided, however, that nothing contained herein shall be construed as a waiver of the State's sovereign immunity; (C) the above named applicant (shipper) has current copies of the Regulations for the Transportation of Radioactive Waste into or within the State of South Carolina, DOT Regulations 49 CFR Parts 171-179, and when applicable, the disposal site radioactive material license and the disposal site waste acceptance criteria; (D) the above named applicant (shipper) has prepared this application to conform with South Carolina Department of Health and Environmental Control Regulation for Transportation of Radioactive Waste

~~Into or Within South Carolina, and that all information contained herein, including any required supplements attached hereto, is true and correct to the best of my knowledge and belief.~~

~~Date _____~~

~~_____ Typed Name and Title of Agent of Applicant
_____ (Shipper)~~

~~_____ Signature~~

DHEC 800
(10/80) Revision

General Instructions and Information

~~1. This form is to be used to provide the Department with prior notification of radioactive waste shipments transported into or within the State of South Carolina. This notification is to be made 72 hours before the expected date of arrival in the State. All written notices should be mailed to:~~

- ~~_____ Bureau of Radiological Health~~
- ~~_____ Radioactive Waste Management Section~~
- ~~_____ S.C. Dept. of Health and Environmental Control~~
- ~~_____ 2600 Bull Street~~
- ~~_____ Columbia, South Carolina 29201~~

~~2. A separate form shall be submitted for each radioactive waste shipment.~~

~~3. Prior notification is required of all radioactive waste shipments as defined in paragraph 2 of Interim Regulations for the Transportation of Radioactive Waste into or within South Carolina except as provided in paragraph 4.1.2 of the Regulation.~~

~~4. The "Manifest Summary" portion of this form will satisfy requirements of providing the Department with a shipping manifest, however, it does not satisfy the requirements of shipping documents which shall accompany the shipments as required by DOT Regulations and the disposal facility's license and criteria.~~

~~5. A copy of this completed form shall be provided to the carrier and all drivers of the radioactive waste shipment.~~

~~6. Upon delivery of the shipment to the consignee, acknowledgment of receipt shall be obtained, and a copy of this form and the shipper/carrier's certification form shall be returned to the Department.~~

Specific Instructions

Item Number

1. Self Explanatory
2. Self Explanatory
3. This item applies to all shipments of radioactive waste transported to and within the State of South Carolina.
4. Each shipment of radioactive waste shall be identified in some manner by the shipper. This number can be a radioactive shipment record number, bill of lading number, allocation number, etc. The

identification number shall only be used once to identify the one shipment for which notification is being made.

- 5. Self Explanatory
- 6. Indicate in this item the disposal facility, company, organization, etc., to which this shipment has been consigned.
- 7. Self Explanatory
- 8. For through shipments, indicate in this item estimated date shipment will pass through the state.
- 9. Self Explanatory
- 10. & 11. Applies only to exclusive use, sole use, and full load shipments.
- 12. All routing information must be specific. You should check with carrier to insure routes you prescribe are appropriate. The carrier is responsible to inform the Department of any changes of routes in South Carolina after departure.
- 13 thru 21. Self Explanatory

Certification: To be signed only by an authorized representative or agent of the shipper and carrier.

Form RHA-PHC SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 ——(5/80) CONTROL
 Radioactive Waste Shipment Prior Notification and Manifest Form

See Reverse Side for Instructions

1. Name and Address of Shipper:	2. Person Responsible for Radioactive Waste Shipment: —(a) Name —(b) Title —(c) Telephone No. (—)	
3. Radioactive Waste Transport Permit No.	4. Shipment Identification No.:	
5. Location from which waste will be shipped:	6. Name and Address of Consignee:	
7. Scheduled Date of Departure of Shipment:	8. Estimated Date of Arrival of Shipment:	
9. Carrier:	10. Type of Transport Vehicle:	11. Trailer No. and Owner (if available)
12. Routes shipment will follow in State of South Carolina (Be Specific):		

Manifest Summary

13. Type Container or Cask:	14. Container Spec.	15. Total No. of Containers
16. Waste Description: Physical and Chemical Form		17. Prominent Radionuclides:
18. Total Curies:	19. Transport Group:	20. Total Cubic Feet:
21. Waste Classification:		
<input type="checkbox"/> Radioactive LSA greater than Type A quantities	<input type="checkbox"/> Bulk LSA and radioactive devices	Normal Form <input type="checkbox"/> Type A quantity <input type="checkbox"/> Type B quantity <input type="checkbox"/> Large quantity
		Special Form <input type="checkbox"/> Type A quantity <input type="checkbox"/> Type B quantity <input type="checkbox"/> Large quantity
		Fissile <input type="checkbox"/> Class I <input type="checkbox"/> Class II <input type="checkbox"/> Class III

CERTIFICATION

I hereby certify on behalf of the above named shipper to the South Carolina Department of Health and Environmental Control that the information provided herein is complete and correct to the best of my knowledge; and that the shipper has complied with all the provisions as required by Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act.

Date _____

Typed Name and Title of Agent of Shipper _____ Signature _____

~~CONSIGNEE ACKNOWLEDGEMENT~~

~~_____ This acknowledges to the South Carolina Department of Health and Environmental Control
_____ that the above described radioactive waste shipment was received.~~

~~_____ Date of Delivery _____ Signature of Consignee or authorized Agent _____~~

~~Typed or Printed Name and Title~~

~~DHEC 802~~

~~(5/80) _____ (Copies of this form may be reproduced locally as needed)~~

~~SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Radioactive Waste Shipment Certification Form~~

~~General Instructions and Information: This is a two part form to be used by shippers and carriers of radioactive waste. The certifications contained herein satisfy the requirements of Section 13-7-150, of Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act. This certification along with a copy of the prior notification form shall accompany each shipment of radioactive waste into and within the State of South Carolina. The shipper is to complete his portion of the form and present it to the carrier as part of the shipping documents. Upon receipt, the carrier shall complete his portion of the form. Upon delivery of the shipment to the consignee, a copy of this certification form, and a copy of the Prior Notification and Manifest form with the consignee acknowledgement, shall be returned to the Department.~~

~~Part I: Shipper's Certificate of Compliance~~

~~1. Name of Shipper and Address: _____ 2. Shipment Identification No. _____~~

~~3. Transport Permit No. _____~~

~~—Telephone No. (____) _____~~

~~In compliance with Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, I hereby certify on behalf of the above named shipper to the South Carolina Department of Health and Environmental Control that the above named shipper has complied with all provisions of Act No. 429 of 1980, and all applicable laws and administrative rules and regulations, both State and Federal, regarding the packaging, transportation, storage, disposal and delivery of such wastes. I further certify that this shipment of radioactive waste has been inspected within 48 hours of the time of departure and that no items of non-compliance with applicable laws, rules or regulations were found.~~

~~Date _____~~

Typed Name and Title of Agent of Shipper _____ Signature _____

Part II: Carrier's Certification

1. Name of Carrier and Address:

2. Shipment Identification No.

3. Transport Trailer No.

____ Telephone No. (____)

4. Scheduled Date of Departure of Shipment:

5. Estimated Date of Arrival of Shipment:

Certification is hereby made to the South Carolina Department of Health and Environmental Control that: (a) the shipper has provided the carrier with a copy of the shipment manifest, the certificate of compliance, and the routing instructions; (b) the shipment of radioactive waste has been properly placarded for transport according to applicable U.S. Department of Transportation Regulations; (c) all shipping papers originated or reproduced by the carrier have been properly executed; (d) the transport vehicle has been inspected according to applicable State and Federal regulations within the prescribed intervals and that all safety and operational components are in good working order and meet the requirements of regulations; (e) all drivers who will operate the vehicle within the State of South Carolina are qualified to transport hazardous materials as specified by applicable U.S. Department of Transportation regulations; (f) the Department shall be immediately notified of any variance, occurring after departure, from the shipper's notification of primary routes in South Carolina and estimated date of arrival; (g) all applicable laws and administrative rules and regulations, both State and Federal, regarding the transportation of radioactive wastes will be complied with.

Date _____

Typed or Printed Name and Title _____

Signature _____

DHEC 803

____ (5/80) _____ (Copies of this form may be reproduced locally as needed)

ATTACHEMENT B
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 13-7-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control (“Department”) proposes amending R.61-83, Transportation of Radioactive Waste Into or Within South Carolina. Interested persons may submit comment(s) on the proposed amendments to Lynne Garner of the Bureau of Land and Waste Management, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; garnerld@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on May 30, 2023, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to S.C. Code Sections 13-7-10 et seq., the Department requires compliance with all applicable provisions of Title 10, Part 71 of the Code of Federal Regulations (10 CFR 71), as revised in February 2018, and any disposal facility’s radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage or delivery of radioactive materials. The Department proposes amending R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to incorporate 10 CFR 71 regulations promulgated in 2018, provide clarification for conformance with Disposal Site Criteria, include an exemption/exception allowance, and update Forms to the current documents in use.

The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

ATTACHMENT C

SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT RESPONSES

Document No. _____

R.61-83, Transportation of Radioactive Waste Into or Within South Carolina

As of the May 30, 2023, close of the Notice of Drafting comment period:

Name	Section
Ben Cunningham, SC Environmental Law Project	Section 8 of the proposed regulation
<p>Comment: Question of what was meant by an “exemption/exception allowance” in the NOD.</p> <p>Department Response: The language in the regulation would allow DHEC the ability to grant exemptions or exception from the requirements of the regulation when authorized by law and when we determine it will not result in undue hazard to public health and safety of property. This language is consistent with language already in Department regulations RHA 61-63, which deal with radioactive material in general.</p>	
Name	Section
Duke Energy & Dominion and PSEG Nuclear NJ and Dominion from Connecticut (members of the Atlantic Compact Commission)	Section 8 of the proposed regulation
<p>Comment: Provided comments in response to a Regulatory Review Task Force to evaluate regulatory burdens on businesses and to propose recommendations to relieve those burdens. (Original correspondence dated February 25, 2013, from Catherine Templeton, SCDHEC Director)</p> <p>Department Response: Section 8 of the Proposed regulations would allow DHEC the ability to grant exemptions or exception from the requirements of the regulation when authorized by law and when we determine it will not result in undue hazard to public health and safety of property. This language is consistent with language already in Department regulations RHA 61-63, which deal with radioactive material in general.</p>	

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

August 10, 2023

(X) ACTION/DECISION

() INFORMATION

I. TITLE: Request for Placement of Etizolam, Fualprazolam, Clonazolam, Flubromazolam, and Diclazepam in Schedule I for Controlled Substances in South Carolina

II. SUBJECT: Placement of Etizolam, Fualprazolam, Clonazolam, Flubromazolam, and Diclazepam in Schedule I for Controlled Substances

III. FACTS:

Controlled substances are governed by the South Carolina Controlled Substances Act (“CSA”), Title 44, Chapter 53 of the South Carolina Code of Laws. Schedule I substances are listed in Section 44-53-190 of the South Carolina Code of Laws. Pursuant to Section 44-53-160, titled “Manner in which changes in schedule of controlled substances shall be made,” controlled substances are generally designated by the General Assembly upon recommendation by the Department. Section 44-53-160(C) provides a process for the Department to expeditiously designate a substance if the federal government has so designated.

South Carolina Section 44-53-160(C) states:

If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department's website indicating the change and specifying the effective date of the change.

On July 26, 2023, the Administrator of the federal Drug Enforcement Administration (“DEA”) issued a temporary order in the Federal Register to schedule five synthetic benzodiazepine substances: etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, in schedule I of the federal Controlled Substances Act (“CSA”). Temporary scheduling allows the federal Drug Enforcement Administration to schedule a substance more quickly in order to avoid an imminent hazard to the public safety as defined in the federal Controlled Substances Act. 21 U.S.C. § 811(h). A temporary scheduling expires after two years, except that the Attorney General may extend the temporary scheduling for up to one year during the

pendency of proceedings to permanently schedule the substance. 21 U.S.C. § 811(h)(2). As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle these five specified controlled substances. The federal temporary scheduling order became effective July 26, 2023. *Federal Register*, Volume 88, Number 142, pages 48112-48118; <https://www.federalregister.gov/content/pkg/FR-2023-07-26/pdf/2023-15748.pdf>.

IV. ANALYSIS:

The CSA requires the Administrator of the DEA to notify the Secretary of the Department of Health and Human Services (“HHS”) of an intent to place a substance in schedule I of the CSA temporarily (i.e., to issue a temporary scheduling order). The Administrator transmitted the required notice to the Assistant Secretary for Health of HHS by letter dated October 27, 2021, regarding etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam. The Assistant Secretary responded to this notice by letter dated January 3, 2022, and advised that, based on a review by the Food and Drug Administration (“FDA”), there are currently no investigational new drug applications (“INDs”) or approved new drug applications (“NDA”) for etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I.

DEA has found that the control of these five benzodiazepines in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety. Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these five benzodiazepine substances.

In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator of the DEA considered available data and information and set forth in the attached Federal Register order the grounds for her determination that it is necessary to temporarily place etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam in schedule I of the CSA, and that such placement is necessary to avoid an imminent hazard to the public safety. The determination was based upon the following conclusions:

- 1) Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam have a high potential for abuse.
- 2) Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam have no currently accepted medical use in treatment in the United States.
- 3) There is a lack of accepted safety for use of Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam under medical supervision.

V. RECOMMENDATION:

Pursuant to S.C. Code Section 44-53-160(C), the Department recommends placing these 5-synthetic benzodiazepine substances in Schedule I in the same manner as the federal Drug Enforcement Administration. The listing of these 5 synthetic benzodiazepine substances includes their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers,

and salts is possible to schedule I for controlled substances in South Carolina and the amendment of Section 44-53-190 of the South Carolina Controlled Substances Act to include:

() 4-(2-chlorophenyl)-2-ethyl-9- methyl-6H-thieno[3,2- f][1,2,4]triazolo[4,3-a][1,4]diazepine (commonly known as etizolam);

() 8-chloro-6-(2-fluorophenyl)-1- methyl-4H-benzo[f][1,2,4]triazolo[4,3- a][1,4]diazepine (commonly known as flualprazolam);

() 6-(2-chlorophenyl)-1-methyl-8- nitro-4H-benzo[f][1,2,4]triazolo[4,3- a][1,4]diazepine (commonly known as clonazolam);

() 8-bromo-6-(2-fluorophenyl)-1- methyl-4H-benzo[f][1,2,4]triazolo[4,3- a][1,4]diazepine (alternate chemical name: 8-bromo-6-(2-fluorophenyl)-1- methyl-4H-[1,2,4]triazolo[4,3- a][1,4]benzodiazepine and commonly known as, flubromazolam);

() 7-chloro-5-(2-chlorophenyl)-1- methyl-1,3-dihydro-2Hbenzo[e][1,4]diazepin-2-one (commonly known as diclazepam)

Submitted by:



Lisa Thomson
Director, Bureau of Drug Control

Gwen Thompson
Director for Healthcare Quality

Attachment:

Federal Register 88, Number 142, July 26, 2023

various projects. A tool manufacturer sends the influencer an expensive full-size lathe in the hope that the influencer would post about it. The woodworker uses the lathe for several products and comments favorably about it in videos. If a significant minority of viewers are likely unaware that the influencer received the lathe free of charge, the woodworker should clearly and conspicuously disclose receiving it for free, a fact that could affect the credibility that viewers attach to the endorsements. The manufacturer should advise the woodworker at the time it provides the lathe that this connection should be disclosed, and it should have reasonable procedures in place to monitor the influencer's postings for compliance and follow those procedures. (See § 255.1(d).)

(8) *Example 8.* An online community has a section dedicated to discussions of robotic products. Community members ask and answer questions and otherwise exchange information and opinions about robotic products and developments. Unbeknownst to this community, an employee of a leading home robot manufacturer has been posting messages on the discussion board promoting the manufacturer's new product. Knowledge of this poster's employment likely would affect the weight or credibility of the endorsements. Therefore, the poster should clearly and conspicuously disclose their relationship to the manufacturer. To limit its own liability for such posts, the employer should engage in appropriate training of employees. To the extent that the employer has directed such endorsements or otherwise has reason to know about them, it should also be monitoring them and taking other steps to ensure compliance. (See § 255.1(d).) The disclosure requirements in this example would apply equally to employees posting their own reviews of the product on retail websites or review platforms.

(9) *Example 9.* A college student signs up to be part of a program in which points are awarded each time a participant posts on social media about a particular advertiser's products. Participants can then exchange their points for prizes, such as concert tickets or electronics. These incentives would materially affect the weight or credibility of the college student's endorsements. They should be clearly and conspicuously disclosed, and the advertiser should take steps to ensure that these disclosures are being provided.

(10) *Example 10.* Great Paper Company sells photocopy paper with

packaging that has a seal of approval from the No Chlorine Products Association, a non-profit third-party association. Great Paper Company paid the No Chlorine Products Association a reasonable fee for the evaluation of its product and its manufacturing process. Consumers would reasonably expect that marketers have to pay for this kind of certification. Therefore, there is no unexpected material connection between the company and the association, and the use of the seal without disclosure of the fee paid to the association would not be deceptive.

(11) *Example 11.* A coffee lover creates a blog that reviews coffee makers. The blogger writes the content independently of the marketers of the coffee makers but includes affiliate links to websites on which consumers can buy these products from their marketers. Whenever a consumer clicks on such a link and buys the product, the blogger receives a portion of the sale. Because knowledge of this compensation could affect the weight or credibility site visitors give to the blogger's reviews, the reviews should clearly and conspicuously disclose the compensation.

(12) *Example 12.* (i) Near the beginning of a podcast, the host reads what is obviously a commercial for a product. Even without a statement identifying the advertiser as a sponsor, listeners would likely still expect that the podcaster was compensated, so there is no need for a disclosure of payment for the commercial. Depending upon the language of the commercial, however, the audience may believe that the host is expressing their own views in the commercial, in which case the host would need to hold the views expressed. (See § 255.0(b).)

(ii) Assume that the host also mentions the product in a social media post. The fact that the host did not have to make a disclosure in the podcast has no bearing on whether there has to be a disclosure in the social media post.

(13) *Example 13.* An app developer gives a consumer a game app to review. The consumer clearly and conspicuously discloses in the review that they were given the app, which normally costs 99 cents, for free. That disclosure suggests that the consumer did not receive anything else for the review. If the app developer also gave the consumer \$50 for the review, the mere disclosure that the app was free would be inadequate.

(14) *Example 14.* Speed Ways, an internet Service Provider, advertises that it has the "Fastest ISP Service" as determined by the "Data Speed Testing Company." If Speed Ways

commissioned and paid for the analysis of its and competing services, it should clearly and conspicuously disclose its relationship to the testing company because the relationship would likely be material to consumers in evaluating the claim. If the "Data Speed Testing Company" is not a bona fide independent testing organization with expertise in judging ISP speeds or it did not conduct valid tests that supported the endorsement message, the endorsement would also be deceptive. (See § 255.3(c)(3))

§ 255.6 Endorsements directed to children.

Endorsements in advertisements addressed to children may be of special concern because of the character of the audience. Practices that would not ordinarily be questioned in advertisements addressed to adults might be questioned in such cases.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2023-14795 Filed 7-25-23; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-989]

Schedules of Controlled Substances: Temporary Placement of Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary order to schedule five synthetic benzodiazepine substances: etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam, in schedule I of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of these five substances in schedule I is necessary to avoid imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical

analysis with, or possess) or propose to handle these five specified controlled substances.

DATES: This temporary scheduling order is effective July 26, 2023, until July 26, 2025. If this order is extended or made permanent, DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION: The Drug Enforcement Administration (DEA) issues a temporary scheduling order¹ (in the form of a temporary amendment) to add the following five substances, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, to schedule I under the Controlled Substances Act (CSA):

- 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as etizolam),
- 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as flualprazolam),
- 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (commonly known as clonazolam),
- 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine (alternate chemical name: 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-[1,2,4]triazolo[4,3-*a*][1,4]benzodiazepine and commonly known as, flubromazolam), and
- 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one (commonly known as diclazepam).

Legal Authority

The CSA provides the Attorney General, as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100, with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if the Administrator finds that such action is necessary to avoid an imminent hazard to public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a

substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Administrator may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, and if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to place a substance in schedule I of the CSA temporarily (*i.e.*, to issue a temporary scheduling order). 21 U.S.C. 811(h)(4). The Administrator transmitted the required notice to the Assistant Secretary for Health of HHS (Assistant Secretary),² by letter dated October 27, 2021, regarding etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary responded to this notice by letter dated January 3, 2022, and advised that, based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDA) for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I.

DEA has taken into consideration the Assistant Secretary's comments as required by subsection 811(h)(4). DEA has found that the control of these five benzodiazepines in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety. Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these five benzodiazepine substances.

As required by 21 U.S.C. 811(h)(1)(A), DEA published a notice of intent (NOI) to temporarily schedule etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam on December 23, 2022. 87 FR 78887. That

NOI discussed findings from DEA's three-factor analysis dated October 2022, which DEA made available on www.regulations.gov.

To find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes any information indicating actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution of these substances. 21 U.S.C. 811(h)(3).

Substances meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

DEA's October 2022 three-factor analysis and the Assistant Secretary's January 3, 2022 letter are available in their entirety under the tab "Supporting Documents" of the public docket of this action at www.regulations.gov.

Five Benzodiazepine Substances: Etizolam, Flualprazolam, Clonazolam, Flubromazolam, and Diclazepam

The dramatic increase in trafficking and abuse associated with novel psychoactive substances (NPS) of the benzodiazepine class, also known as designer benzodiazepines, in the United States has become a national public health concern in recent years. The availability of NPS benzodiazepine substances in the illicit drug market continues to pose an imminent hazard to the public safety. The Centers for Disease Control and Prevention (CDC) highlights this issue in their Morbidity and Mortality Weekly Report (MMWR) published on August 27, 2021.³ CDC indicated that from April 2019 to June 2020 prescription and illicit benzodiazepine-involved overdose deaths increased by 21.8 percent and 519.6 percent respectively. Additionally, benzodiazepines were involved in nearly 7,000 overdose

¹ Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this order adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

² The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

³ Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report: Trends in Nonfatal and Fatal Overdoses Involving Benzodiazepines—38 States and the District of Columbia, 2019–2020. Vol. 70, No. 34. August 27, 2021.

deaths in 23 states from January 2019 to June 2020, accounting for 17 percent of all drug overdose deaths. Adverse health effects associated with the abuse of such substances, their continued evolution, and increased popularity of these substances have been a serious concern in recent years.

The increase in the co-use of opioids with designer benzodiazepines has become a particular concern as the United States continues to experience an unprecedented epidemic of opioid misuse and abuse.⁴ CDC's 2021 MMWR further states that between January and June 2020, 92.7 percent of benzodiazepine-involved deaths also involved opioids and 66.7 percent involved illicitly manufactured fentanyl. The combination of benzodiazepines with opioids substantially enhances the potential for lethality. Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam are benzodiazepine substances recently identified on the illicit drug market in the United States.

The abuse of etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam has been associated with fatalities in recent years in the United States. The positive identification of these five substances in post-mortem cases is a serious concern to the public safety. Additionally, law enforcement data indicate that the substances at issue here have significant presence in the illicit drug market found in the United States. In light of the law enforcement encounters and fatalities associated with the abuse of etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam, these substances pose an imminent hazard to public safety.

Available data and information for etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam, summarized below, indicate that these substances have high potential for abuse, no currently accepted medical use in treatment in the United States, and lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under "Supporting and Related Material" of the public docket for this action at www.regulations.gov under Docket Number DEA-989.

Factor 4. History and Current Pattern of Abuse

The chemical synthesis of etizolam, flualprazolam, clonazepam,

⁴ Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report: Trends in Nonfatal and Fatal Overdoses Involving Benzodiazepines—38 States and the District of Columbia, 2019–2020. Vol. 70, No. 34. August 27, 2021.

flubromazolam, and diclazepam was previously reported in the scientific literature; however, the research did not lead to any medically approved products in the United States. Since 2012, synthetic drugs belonging to the benzodiazepine class have begun to emerge in the illicit drug market as evidenced by the identification of these drugs in forensic drug exhibits reported to the National Forensic Laboratory Information System (NFLIS-Drug)⁵ and toxicology samples. Beginning in 2012, etizolam emerged on the illicit synthetic drug market as evidenced by its identification in drug seizures in the United States.

In recent years, there has been a rise in the recreational use of etizolam. As evidenced by their identification in NFLIS-Drug, diclazepam emerged in the United States' illicit drug market in 2014, flubromazolam and clonazepam in 2015, and flualprazolam in 2017. While these substances are not approved for medical use in the United States, etizolam is approved for medical use in Italy, India, and Japan.⁶ In a letter dated January 3, 2022, the Assistant Secretary informed DEA that there are no INDs or FDA-approved NDAs for etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam in the United States. Hence, there are no legitimate channels for these substances as marketed drug products in the United States. These five benzodiazepine substances are likely to be abused in the same manner as other sedative hypnotics. They have been identified in tablet form, as white to beige powders,

⁵ NFLIS-Drug represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle more than 96 percent of an estimated 1.0 million distinct annual state and local drug analysis cases. NFLIS-Drug includes drug chemistry results from completed analyses only. While NFLIS-Drug data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332, Dec. 12, 2011.

⁶ Although there is no evidence suggesting that etizolam, flualprazolam, clonazepam, flubromazolam, or diclazepam has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

or in liquid forms, typically of unknown purity or concentration.

Based on data from NFLIS-Drug, law enforcement often encounters etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam in counterfeit pills, liquid, or powder form. Substances often found in combination with some of these benzodiazepines include substances of abuse such as heroin (schedule I), fentanyl (schedule II), substances structurally related to fentanyl, other benzodiazepines (both FDA-approved schedule IV benzodiazepines and other novel non-controlled benzodiazepines), and tramadol (schedule IV). Evidence suggests that individuals are using these substances to obtain "legal highs"⁷ or to self-medicate. Information gathered from case histories and autopsy findings shows that deaths involving etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam were predominantly associated with poly-drug use.

Factor 5. Scope, Duration, and Significance of Abuse

Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam are novel benzodiazepines and evidence suggests they are abused for their sedative effects (see Factor 6). In death investigations involving polysubstance use, the co-appearance of benzodiazepines and opioids in toxicological analysis was common. Between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens, respectively, out of 18 deaths associated with the abuse of isotonitazene, a schedule I opioid that was recently controlled.⁸ These cases corresponded to four states—Illinois (9), Indiana (7), Minnesota (1), and Wisconsin (1). Most (12) of the decedents were male. The ages ranged from 24 to 66 years old with an average age of 41 years.⁹

In another recent publication, 20 forensic postmortem cases were reviewed and analyzed for the presence of metonitazene, NPS benzodiazepines, and opioids. Clonazepam was positively identified in four cases, etizolam in two cases, flualprazolam in two cases, and

⁷ Substances used as "legal highs" are psychoactive substances that are not controlled under the CSA, but can be used to obtain a desired psychoactive effect.

⁸ 85 FR 51342 and 86 FR 60761.

⁹ Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. *Journal of Analytical Toxicology*. 2020, 44(6):521–530.

pyrazolam in one case.¹⁰ Law enforcement encounters of etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam as reported to NFLIS-Drug include 34,781 drug reports since 2014 (queried 01/13/2022). NFLIS-Drug registered three encounters of etizolam in 2012 (first year of encounter) and 3,022 reports in 2021. Flualprazolam was first encountered in 2017 when one report was identified in NFLIS-Drug, and then in 2021, 1,305 encounters were reported. A similar trend was seen with clonazepam. During 2015 (its first year of encounter), 57 cases were reported in NFLIS-Drug, while 3,994 drug reports were identified in 2021. NFLIS-Drug registered five diclazepam encounters in 2014 (its first year of encounter) and 54 encounters in 2021. Flubromazolam encounters totaled 14 in 2015 (its first year of encounter) and 414 in 2021.

The population likely to abuse etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam appears to be the same as those abusing prescription benzodiazepines, barbiturates, and other sedative hypnotic substances. This is evidenced by drug user reports associated with these substances. Because abusers of etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and inconsistent, thus posing significant adverse health risks to the end user.

The misuse and abuse of benzodiazepines have been demonstrated and are well-characterized.¹¹ According to the most recent data from the National Survey on Drug Use and Health (NSDUH),¹² as of

2020, an estimated 4.8 million people aged 12 years or older misused prescription benzodiazepines in the past year. This included 1.1 million young adults aged 18 to 25, 3.5 million adults aged 26 or older, and 157,000 adolescents aged 12 to 17. This population abusing prescription benzodiazepines is likely to be at risk of abusing etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam. Individuals who initiate use of these five substances (*i.e.*, use a drug for the first time) are likely to be at risk of developing substance use disorder, overdose, and death at rates similar to that of other sedative hypnotics (*e.g.*, alprazolam, etc.). Law enforcement or toxicology reports demonstrate that the five substances at issue are being distributed and abused.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in benzodiazepine-related overdose deaths in the United States has been exacerbated recently by the availability of NPS benzodiazepines in the illicit drug market. Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam have been described as derivatives of other known benzodiazepines, each possessing various degrees of potency. Evidence suggests these substances are being abused for their sedative/hypnotic effects (see DEA 3-Factor Analysis). Public health risks associated with the five substances at issue here relate to their pharmacological similarities with known benzodiazepines. Thus, risk to the public health is associated with adverse reactions in humans, which are expected to include CNS depressant-like effects, such as slurred speech, ataxia, altered mental state, and respiratory depression.

Etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam have been increasingly identified in toxicology reports, death investigations, and driving under the influence of drugs (DUID) cases since their first appearance in law enforcement seizures. According to the Center for Forensic Science Research and Education (CFSRE), a non-profit organization in collaboration with the Department of Justice and CDC between 2020 and 2021, etizolam was the most identified NPS benzodiazepine accounting for 697 total toxicology cases in 2020, many of which were co-identified with fentanyl. In 2021, etizolam was identified in 1,012

includes prevalence estimates by lifetime (*i.e.*, ever used), past year, and past month abuse or dependence. The 2020 NSDUH annual report is available at <https://www.samhsa.gov/data/> (last accessed February 8, 2022).

toxicology cases, while flualprazolam, clonazepam, flubromazolam, and diclazepam were associated with 432, 331, 170, and four toxicology cases, respectively (CSFRE Quarterly Trend Reports: NPS Benzodiazepines in the United States).

Death investigations associated with four of the five NPS benzodiazepines at issue here have increased in recent years. In a 2021 publication by the Orange County Crime Lab in Santa Ana, California, flualprazolam was identified as serving a contributory role in the death of 13 of 24 cases analyzed in the study.¹³ In another recently published study, between August 2019 and January 2020, flualprazolam and etizolam were identified in seven and six postmortem blood specimens respectively, out of 18 deaths associated with the abuse of isotornitazene, a schedule I opioid.¹⁴ Then, a study published in 2021 which compiled data from 254 reports published between 2008 and 2021, identified: 33 deaths associated with etizolam, 20 flualprazolam-related deaths, six emergency department (ED) visits associated with clonazepam, 14 flubromazolam-related ED visits, and one death, 12 DUID cases, and four ED visits associated with diclazepam.¹⁵ Additionally, in 2020, the European Monitoring Centre for Drugs and Drug Addiction reported 34 deaths associated with diclazepam use, which were determined through the analysis of biological samples.¹⁶ Furthermore, the National Poison Data System reported that between January 2014 and December 2017, clonazepam was the second most common benzodiazepine associated with poison control center calls, accounting for 50 incidents.¹⁷

Impaired driving is another risk factor associated with the use and abuse of etizolam, flualprazolam, clonazepam, flubromazolam, and diclazepam. In a recent published report from the

¹³ Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. *Journal of Forensic Sciences*, 2022, 67(1): 297–308.

¹⁴ Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK. Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. *Journal of Analytical Toxicology*, 2020, 44(6): 521–530.

¹⁵ Brunetti P, Giorgetti R, Tagliabracchi A, Huestis MA, Busardò FP. Designer Benzodiazepines: A Review of Toxicology and Public Health Risks. *Pharmaceuticals (Basel)*. 2021 Jun 11;14(6):560.

¹⁶ EMCDDA (2020). EMCDDA response to WHO request for information on the new psychoactive substances, eutylone, α -PHiP, 4F-furanylfentanyl, 2-methyl-AP-237, and, diclazepam.

¹⁷ Carpenter JE, Murray BP, Dunkley C, Kazzi ZN, Gittinger MH. Designer benzodiazepines: a report of exposures recorded in the National Poison Data System, 2014–2017. *Clin Toxicol (Phila)*. 2019 Apr;57(4):282–286.

¹⁰ Krotulski AJ, Papsun DM, Walton SE, and Logan BK. Metonitazene in the United States—Forensic toxicology assessment of a potent new synthetic opioid using liquid chromatography mass spectrometry. *Drug Testing Analysis*, 2021, 13(10):1697–1711.

¹¹ Votaw VR, Geyer R, Rieselbach MM, and McHugh RK. The epidemiology of benzodiazepine misuse: A systematic review. *Drug Alcohol Dependence*, 2019, 200:95–114.

¹² The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and

Sedgwick County Regional Forensic Science Center in Wichita, Kansas, 12 DUID case samples were analyzed. Etizolam was positively identified in three cases, while flubromazolam was identified in nine of these cases.¹⁸ In a 2021 publication, similar involvement of flubromazolam in drug-impaired driving was reported in Canada where flubromazolam was detected in 10 percent of 113 case samples.¹⁹ Diclazepam has also been implicated in DUID cases domestically and internationally. In a Norwegian study conducted between July 2013 and May 2016, diclazepam was identified in 15 of 77 analyzed samples taken from impaired drivers and individuals involved in other criminal offenses. Then, in 2019, a study of Norwegian drivers was conducted using 575 samples taken predominantly from intoxicated drivers and individuals who committed other criminal offenses.²⁰ Notably, 334 samples were found to contain diclazepam. Additionally, in a 2021 publication from Orange County Crime Laboratory in Santa Ana, California, researchers identified 22 samples that tested positive for flualprazolam in samples obtained from DUID investigations between August 2018 and September 2020.²¹

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and/or abuse of etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam pose imminent hazards to public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I

are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam indicate that these five synthetic benzodiazepine substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

As required by 21 U.S.C. 811(h)(4), the Administrator transmitted to the Assistant Secretary for Health, via a letter dated October 27 2021, notice of her intent to place etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I on a temporary basis. HHS had no objection to the temporary placement of these substances in schedule I.

DEA subsequently published a NOI on December 23, 2022. 87 FR 78887.

Conclusion

In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily place etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam in schedule I of the CSA and finds that such placement is necessary to avoid an imminent hazard to the public safety.

This temporary order scheduling these substances will be effective on the date the order is published in the **Federal Register** and remain in effect for two years, with a possible extension of one year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling drugs or other substances. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done “on the record after opportunity for a hearing” conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with an appropriate process and the government any additional relevant information needed to make determinations. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not

subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, possession of, and engagement in research and conduct of instructional activities or chemical analysis with, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (possesses, manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with) or desires to handle, etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must be registered with DEA to conduct such activities, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of July 26, 2023. Any person who currently handles etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam and is not registered with DEA must submit an application for registration and may not continue to handle etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam as of July 26, 2023, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA on or after July 26, 2023 is unlawful, and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is unable to obtain a schedule I registration to handle etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam must surrender all currently held quantities of these five substances.

3. *Security.* Etizolam, flualprazolam, clonazolam, flubromazolam, and diclazepam are subject to schedule I security requirements and must be handled in accordance with 21 CFR 1301.71–1301.93, as of July 26, 2023.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of etizolam, flualprazolam,

¹⁸ Rohrig TP, Osawa KA, Baird TR, Youso KB. Driving Impairment Cases Involving Etizolam and Flubromazolam. *J Anal Toxicol.* 2021 Feb 6;45(1):93–98.

¹⁹ Vaillancourt L, Viel E, Dombrowski C, Desharnais B, Mireault P. Drugs and driving prior to cannabis legalization: A 5-year review from DECP (DRE) cases in the province of Quebec, Canada. *Accid Anal Prev.* 2021 Jan;149:105832.

²⁰ Heide G, Høiseth G, Middelkoop G, and Øiestad ÅML. Blood concentrations of designer benzodiazepines: Relation to impairment and findings in forensic cases. *Journal of Analytical Toxicology.* 2020, 44(8): 905–914.

²¹ Ha HH and Mata DC. Flualprazolam distribution in postmortem samples. *Journal of Forensic Sciences.* 2022, 67(1): 297–308.

clonazepam, flubromazepam, and diclazepam must comply with 21 U.S.C. 825 and 958(e) and 21 CFR part 1302. Current DEA registrants will have 30 calendar days from July 26, 2023 to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam on the effective date of this order must take an inventory of all stocks of these substances on hand pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants will have 30 calendar days from the effective date of this order to comply with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam) on hand on a biennial basis pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR parts 1304, 1312, and 1317, and section 1307.11. Current DEA registrants authorized to handle these five substances shall have 30 calendar days from the effective date of this order to comply with all recordkeeping requirements.

7. *Reports.* All DEA registrants must submit reports with respect to etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304, 1312, and 1317, and sections 1301.74(c) and 1301.76(b), as of July 26, 2023. Manufacturers and distributors must also submit reports regarding these five substances to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of July 26, 2023.

9. *Importation and Exportation.* All importation and exportation of etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam must be in compliance with 21 U.S.C. 952, 953,

957, and 958, and in accordance with 21 CFR part 1312 as of July 26, 2023.

10. *Quota.* Only DEA-registered manufacturers may manufacture etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303, as of July 26, 2023.

11. *Liability.* Any activity involving etizolam, flualprazolam, clonazepam, flubromazepam, and diclazepam not authorized by or in violation of the CSA, occurring as of July 26, 2023, is unlawful and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

The CSA provides for expedited temporary scheduling actions where necessary to avoid imminent hazards to the public safety. Under 21 U.S.C. 811(h), the Administrator, as delegated by the Attorney General, may, by order, temporarily schedule substances in schedule I. Such orders may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary for Health of HHS, as delegated by the Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 811(h) directs that temporary scheduling actions be issued by order (as distinct from a rule) and sets forth the procedures by which such orders are to be issued, including the requirement to publish in the **Federal Register** a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, which are applicable to rulemaking, do not apply to this temporary scheduling order. The APA expressly differentiates between orders and rules, as it defines an “order” to mean a “final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making.” 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates its intent that DEA issue *orders* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator (as delegated by the Attorney General) to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in section 811(h), Congress authorized the issuance of

temporary scheduling actions by order rather than by rule.

Alternatively, even if this action was subject to section 553 of the APA, the Administrator finds that there is good cause to forgo its notice-and-comment requirements, as any further delays in the process for issuing temporary scheduling orders would be impracticable and contrary to the public interest given the manifest urgency to avoid imminent hazards to public safety.

Although DEA believes this temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a “significant regulatory action,” requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 18, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(57) through (h)(61) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(57) 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: etizolam) 2780

(58) 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and

salts of isomers (Other name: flualprazolam) 2785

(59) 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: clonazolam) 2786

(60) 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine, its salts, isomers, and salts of isomers (Other name: flubromazolam) 2788

(61) 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one, its salts, isomers, and salts of isomers (Other name: diclazepam) 2789

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–15748 Filed 7–25–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9978]

RIN 1545–BQ08

Recapture of Certain Excess Employment Tax Credits Under COVID–19 Legislation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document sets forth the final regulations under sections 3111, 3131, 3132, 3134, and 3221 of the Internal Revenue Code (Code) issued under the authority granted by the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act, and the American Rescue Plan Act of 2021. These final regulations authorize the assessment of any erroneous refund of the tax credits paid under sections 7001 and 7003 of the Families First Coronavirus Response Act (including any increases in those credits under section 7005 thereof), and section 2301 of the Coronavirus Aid, Relief, and Economic Security Act, as well as under sections 3131, 3132 (including any increases in those credits under section 3133), and 3134 of the Code.

DATES:

Effective date: These final regulations are effective on July 24, 2023.

Applicability date: For date of applicability, see §§ 31.3111–6(e),

31.3131–1(d), 31.3132–1(d), 31.3134–1(d), and 31.3221–5(e).

FOR FURTHER INFORMATION CONTACT: NaLee Park at 202–317–6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3111, 3131, 3132, 3133, 3134, and 3221.

The Families First Coronavirus Response Act (Families First Act), Public Law 116–127, 134 Stat. 178 (March 18, 2020), as amended and extended by the COVID-related Tax Relief Act of 2020 (Tax Relief Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (December 27, 2020), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (March 27, 2020), as amended and extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, provided relief to taxpayers from economic hardships resulting from the Coronavirus Disease 2019 (COVID–19), including paid sick and family leave credits to eligible employers with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2020, and ending March 31, 2021, and an employee retention credit (ERC) with respect to qualified wages paid after March 12, 2020, and before July 1, 2021, respectively. The American Rescue Plan Act of 2021 (ARP), Public Law 117–2, 135 Stat. 4 (March 11, 2021), provided additional COVID–19 relief with similar paid leave credits under sections 3131 through 3133 of the Code, enacted by section 9641 of the ARP, with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2021, and ending September 30, 2021, and a substantially similar ERC under section 3134 of the Code, enacted by section 9651 of the ARP, with respect to qualified wages paid after June 30, 2021, and before January 1, 2022.¹

¹ Section 80604 of the Infrastructure Investment and Jobs Act (Infrastructure Act), Public Law 117–68, 135 Stat. 429 (November 15, 2021) amended section 3134(n) of the Code to provide that the ERC under section 3134 applies only to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022). Therefore, the only type of employer eligible for the ERC for wages paid after September 30, 2021, and before January 1, 2022, is an employer that meets the definition of a recovery startup business under section 3134(c)(5). See Notice 2021–