



Board:

Mark R. Elam, Chairman	Seema Shrivastava-Patel
Jim P. Creel, Jr., Vice-Chairman	Richard V. Lee, Jr.
Charles M. Joye, II, P.E., Secretary	Morris E. Brown, III, MD, FAAFP
J.B. (Sonny) Kinney	Robert R. Morgan, Jr., MD, MBA

**Minutes of the August 12, 2021, meeting of the
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, August 12, 2021, at 11:00 a.m. in the Boardroom (#3420) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Mark Elam, Chairman
Jim P. Creel, Jr., Vice-Chairman, 7th District
J.B. (Sonny) Kinney, 1st District
Seema Shrivastava-Patel, 2nd District
Charles M. Joye, II, P.E., 3rd District
Robert Morgan, MD, 4th District
Richard V. Lee, Jr., 5th District

In attendance virtually:
Morris E. Brown, III, MD, 6th District

Also, in attendance were Dr. Edward Simmer, Director; Rupinjerjit Grewal, Acting Board Counsel; M. Denise Crawford, Clerk; Department staff; and members of the public. The meeting was also available via Livestream.

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

Item 1: Minutes of June 10, 2021 meeting (Attachment 1-1)

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

Mr. Joye made a motion that the Board go into Executive Session pursuant to SC Code Section 30-4-70 to obtain legal advice related to COVID-19. Mr. Kinney seconded the motion and the motion carried unanimously.

Chairman Elam stated the Board was back in public session and while in Executive Session no actions were taken.

Item 2: Agency Affairs

Dr. Edward Simmer, Director, updated the Board on,

- COVID 19 messaging and outreach;
- SHaPE SC Task Force;
- Department's Electronic Health Record;
- Immunization week;
- Certificate of Need program;
- Electronic State Licensure;
- New Indy;
- LEAP employees in Class 5.

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

Item 3: Administrative Orders and Consent Orders issued by Healthcare Quality (Attachment 3-1)

Ms. Bentley White, Director of Policy and Communications, Healthcare Quality, stated that for this reporting period, four (4) Consent Orders with assessed civil penalties totaling \$45,600.00 and no Administrative Orders were issued.

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

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

Ms. Rebecca Sproles, Liaison, Environmental Affairs, stated that for this reporting period, twenty-four (24) Consent Orders with assessed civil penalties totaling \$82,030.00 and nine (9) Administrative Order with assessed civil penalties totaling \$52,930.00 were issued.

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

Item 5: Notice of Proposed Regulation amending Regulation 61-7, Emergency Medical Services

Mr. Russell Morrison, Director, Information and Regulatory Affairs Division, Office of Policy and Communication, Healthcare Quality, presented this item to the Board.

Healthcare Quality proposed the Notice of Proposed Regulation amending R.61-7, *Emergency Medical Services*, for publication in the August 27, 2021, *South Carolina State Register* ("State Register"). Legal authority resides in S.C. Code Sections 44-61-10 *et seq.* which requires the Department of Health and Environmental Control ("Department") to establish and enforce basic standards for the licensure of ambulance services and emergency medical responder agencies, and certification of EMS personnel to ensure the safe and adequate treatment of persons served in this state. Legal authority also resides in S.C. Code Sections 44-78-10 *et seq.* and 44-80-10 *et seq.* which requires the Department to promulgate regulations necessary to provide direction to emergency personnel in identifying patients who have a Do Not Resuscitate Order ("DNR"), and to oversee the Physician Orders for Scope of Treatment (POST) form and carry out other related responsibilities. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

Healthcare Quality proposed amending R.61-7 to update provisions in accordance with current practices and standards. Proposed amendments incorporate and revise provisions and definitions to conform to statutory mandates and terminology widely used and understood within the provider community. The Department proposed revising requirements for Emergency Medical Technician (EMT) training programs, ambulance design and equipment, incident reporting, sanitation and infection control, monetary penalties, and other requirements for EMS agency licensure, ambulance permitting, and EMT certification. The Department also proposed amending the regulation to provide direction to emergency personnel in identifying patients who have a Do Not Resuscitate Order ("DNR"), and to add oversight of the Physician Orders for Scope of Treatment (POST) form and carry out other related responsibilities to the form.

The Department had a Notice of Drafting published in the February 26, 2021, *State Register*. The Department received public comments from 25 parties by the March 29, 2021, close of the public comment period. A summary of these public comments received, and Department responses were provided to the Board.

Healthcare Quality staff provided members of the Emergency Medical Services Advisory Council a draft copy of this Notice of Proposed Regulation for review and response on June 7, 2021. Department staff received comments on the proposed amendments from the EMS Advisory Council on June 29, 2021. A summary of these comments received, and Department responses were provided to the Board.

Healthcare Quality held a virtual stakeholder meeting on March 19, 2021.

Department staff conducted an internal review of the proposed amendments on June 22, 2021.

Healthcare Quality requested the Board to grant approval of the Notice of Proposed Regulation for publication in the August 27, 2021, *State Register*.

After discussion, **Mr. Lee moved, seconded by Ms. Shrivastava-Patel, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-7, *Emergency Medical Services*, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 6: Notice of Proposed Regulation amending Regulation 61-77, Standards for Licensing Home Health Agencies

Mr. Russell Morrison, Director, Information and Regulatory Affairs Division, Office of Policy and Communication, Healthcare Quality, presented this item to the Board.

Healthcare Quality proposed the Notice of Proposed Regulation amending R.61-77, *Standards for Licensing Home Health Agencies*, for publication in the August 27, 2021, *South Carolina State Register* ("*State Register*"). Legal authority resides in S.C. Code Sections 44-69-10 *et seq.*, which requires the Department to set standards for the care, treatment, health, safety, welfare, and comfort of patients served by home health agencies, and for the maintenance and operation of home health agencies. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed new amendments.

The Department proposed amending R.61-77, *Standards for Licensing Home Health Agencies*, to ensure alignment with current federal and state laws, and revise definitions and requirements for obtaining licensure, inspections, personnel, enforcement, patient care, record maintenance and retention, and licensure standards. The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Department had a Notice of Drafting published in the April 23, 2021, *State Register*. The Department received no public comments by the May 24, 2021, close of the public comment period.

Healthcare Quality held a virtual stakeholder meeting on March 12, 2021; five (5) individuals attended the meeting. Healthcare Quality staff considered stakeholder feedback in formulating the proposed amendments herein.

Department staff conducted an internal review of the proposed amendments on July 7, 2021.

Healthcare Quality requested the Board to grant approval of the Notice of Proposed Regulation for publication in the August 27, 2021, *State Register*.

After discussion, **Dr. Morgan moved, seconded by Mr. Kinney, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-77, *Standards for Licensing Home Health Agencies*, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 7: Notice of Proposed Regulation amending Regulation 61-79, *Hazardous Waste Management Regulations*

Ms. Stacey French, Director, Division of Waste Management, presented this item to the Board.

The Bureau of Land and Waste Management (“Bureau”) proposed the Notice of Proposed Regulation amending R.61-79, *Hazardous Waste Management Regulations*, for publication in the August 27, 2021, *South Carolina State Register* (“*State Register*”). Legal authority resides in the South Carolina Hazardous Waste Management Act, S.C. Code Ann. Sections 44-56-10 *et seq.*, which authorizes the Department of Health and Environmental Control (“Department”) to promulgate hazardous waste management regulations, procedures, or standards as may be necessary to protect human health and the environment. The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Bureau proposed amending R.61-79 to adopt the final Environmental Protection Agency (“EPA”) rule, “Modernizing Ignitable Liquids Determinations,” published in the Federal Register on July 7, 2020, at 85 FR 40594-40608. This rule updates flash point test methods used to determine if a liquid waste is hazardous and will allow the use of non-mercury thermometers in approved analytical methods that currently require mercury thermometers. This rule will reduce the burden on the regulated community by providing greater clarity to determinations of hazardous waste, providing more flexibility in testing requirements, and improving environmental compliance, thereby enhancing the protection of human health and the environment.

The EPA has given authorized states, including South Carolina, the discretion to adopt this rule. The Ignitability Rule will make the regulations neither more nor less stringent than current requirements.

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

The Bureau had a Notice of Drafting published in the April 23, 2021, *State Register*. The Bureau received no comments during the public comment period.

The Bureau updated its "Hazardous Waste Management Regulations Update Status" webpage on April 29, 2021, to include a summary of the proposed amendments.

The Bureau conducted an outreach meeting on June 4, 2021, with the Environmental Technical Committee of the South Carolina Manufacturers Alliance.

Department staff conducted an internal review of the proposed amendments on June 14, 2021.

The Bureau requested the Board to grant approval of the attached Notice of Proposed Regulation for publication in the August 27, 2021, *State Register*.

After discussion, **Mr. Kinney moved, seconded by Ms. Shrivastava-Patel, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-79, Hazardous Waste Management Regulations, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Item 8: Notice of Proposed Regulation amending Regulation 61-62, Air Pollution Control Regulations and Standards

Ms. Mary Peyton Wall, Section Manager, Air Regulation, Data Analysis, and SIP Management, presented this item to the Board.

The Bureau of Air Quality (Bureau) proposed the Notice of Proposed Regulation amending R.61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina Air Quality Implementation Plan (SIP) for publication in the August 27, 2021, *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 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 the Department promulgates these amendments for compliance with federal air pollution control laws.

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.

The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments at 40 CFR Parts 51, 52, 60, 63, and 70 include revisions to Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NSR), New Source Performance Standards (NSPS) and Emission Guidelines, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, and the Title V Operating Program.

The Department proposed 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, 2020, through December 31, 2020.

The Department also proposed amending Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration (PSD)*, and Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR)*, to incorporate EPA's clarification of Project Emissions Accounting, as published in the *Federal Register* on November 24, 2020 (85 FR 74890), and to incorporate EPA's corrections to NSR regulations, as published in the *Federal Register* on July 19, 2021 (86 FR 37918), and to make other amendments, as necessary, to maintain compliance with federal law.

The Department further proposed amending R.61-62.70, *Title V Operating Permit Program*, to codify relevant federal amendments to Title V provisions, as published in the *Federal Register* on February 5, 2020 (85 FR 6431), to ensure compliance with federal law.

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

The Department had a Notice of Drafting published in the March 26, 2021, *State Register*. The Bureau 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 26, 2021. The Department received no public comments by the April 26, 2021, close of the public comment period.

Department staff conducted an internal review of the proposed amendments on June 21, 2021.

South Carolina industries are already subject to national air quality standards as a matter of federal law. Thus, there will be no increased cost to the state or its political subdivisions resulting from adoption of these federal amendments beyond those mandated by federal law. South Carolina is already reaping the environmental benefits of these amendments.

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

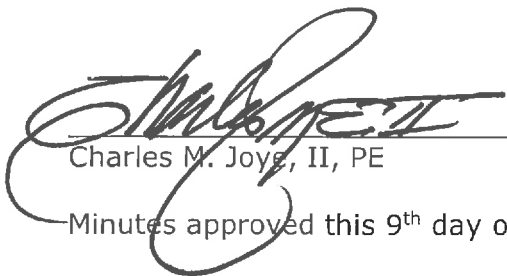
The Bureau of Air Quality requested the Board grant approval of the attached Notice of Proposed Regulation for publication in the August 27, 2021, *State Register*.

After discussion, **Mr. Kinney moved, seconded by Ms. Shrivastava-Patel, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-62, Air Pollution Control Regulations and Standards, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and Motion carried.**

Being no further business, Chairman Elam adjourned the meeting.

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

Respectfully submitted,



Charles M. Joyce, II, PE

Minutes approved this 9th day of September 2021.

ATTEST:



Mark R. Elam, Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign in Sheet
- 1-1 Minutes of June 10, 2021 meeting
- 3-1 Administrative Orders and Consent Orders issued by Healthcare Quality
- 4-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 5-1 Notice of Proposed Regulation amending Regulation 61-7, *Emergency Medical Services* 6-1 Request for Placement of 4F-MDMB-BINACA in Schedule I for Controlled Substances in South Carolina
- 6-1 Notice of Proposed Regulation amending Regulation 61-77, *Standards for Licensing Home Health Agencies*
- 7-1 Notice of Proposed Regulation amending Regulation 61-79, *Hazardous Waste Management Regulations*
- 8-1 Notice of Proposed Regulation amending Regulation 61-62, *Air Pollution Control Regulations and Standards*