



Mark R. Elam, Chairman  
Seema Shrivastava-Patel, Vice-Chairman  
Charles M. Joye, II, P.E., Secretary  
Jim P. Creel, Jr.

**Board:**  
J.B. (Sonny) Kinney  
Richard V. Lee, Jr.  
Morris E. Brown, III, MD, FAAFP  
Robert R. Morgan, Jr., MD, MBA

## **Minutes of the November 10, 2021, meeting of the South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, November 10, 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, 7<sup>th</sup> District  
J.B. (Sonny) Kinney, 1<sup>st</sup> District  
Seema Shrivastava-Patel, 2<sup>nd</sup> District  
Charles M. Joye, II, P.E., 3<sup>rd</sup> District  
Richard V. Lee, Jr., 5<sup>th</sup> District  
Morris E. Brown, III, MD, 6<sup>th</sup> District

Not in attendance:

Robert Morgan, MD, 4<sup>th</sup> District

Also, in attendance were Dr. Edward Simmer, Director; W. Marshall Taylor, General Counsel; M. Denise Crawford, Clerk; Department staff; and members of the public. The meeting was also available via Livestream.

Vice-Chairman Creel 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. Chairman Elam arrived shortly after the meeting was called to order and asked Vice-Chairman Creel to continue as the Chair.

### **Item 1: Minutes of October 7, 2021 meeting** (Attachment 1-1)

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

## **Item 2: Agency Affairs**

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

- Veterans Day video and Department's goal to hire veterans;
- COVID 19;
- Vaccinations of 5-11 years old;
- Five year regulation review;
- New Indy;
- Surface Water regulation;
- Work that is being done to improve flooding in Charleston;

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

Dr. Simmer recognized the Department's Motor Pool for receiving Maintenance Facility Certification from the South Carolina Department of Administration.

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

## **Item 3: SHaPE SC Task Force Report**

Dr. Simmer provided an update on the SHaPE SC Task Force and introduced former Senator Larry Martin, SHaPE SC Chair, and Mr. Bernie Hawkins, SHaPE SC Facilitator to present the findings to the Board. The Board was provided a copy of the SHaPE SC Task Force Report (Attachment 3-1) as well as the Department's response (Attachment 3-2). The Board also received a letter from the Chair of the South Carolina Mental Health Commission in support of the SHaPE SC Task Force Report (Attachment 3-3).

After discussion, **the Board requested Dr. Simmer establish a list of Department goals in response to the SHaPE SC Task Force Report and the Department's response and present them at the January 2022 meeting of the Board.**

After further discussion, **Mr. Kinney moved, seconded by Ms. Shrivastava-Patel, to accept the SHaPE SC Task Force Report and the Department's response as information and to direct the Chairman to submit these documents to the Speaker of the House, the President of the Senate, and the Governor for consideration. The Board voted and Motion carried.**

**Item 4: 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, nine (9) Consent Orders with assessed civil penalties totaling \$20,500.00 and no Administrative Orders were issued.

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

**Item 5: Administrative Orders and Consent Orders issued by Environmental Affairs** (Attachment 4-1)

Ms. Myra Reece, Director of Environmental Affairs, stated that for this reporting period, seventy-seven (77) Consent Orders with assessed civil penalties totaling \$166,170.00 and twelve (12) Administrative Order with assessed civil penalties totaling \$55,850.00 were issued.

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

**Item 6: Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-7, Emergency Medical Services, Document No. 5055**

Vice-Chairman Creel, after introducing this item, advised that the item had been withdrawn from the agenda pursuant to staff's request.

**Item 7: Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-77, Standards for Home Health Agencies, Document No. 5057**

A Public Hearing was conducted concerning the Regulation. Ms. Kristen Kollu, Director, Provider Services Division, Bureau of Healthcare Systems and Services, presented this item to the Board.

The Bureau of Healthcare Systems and Services (Bureau) proposed the Notice of Final Regulation amending R.61-77, *Standards for Licensing Home Health Agencies*. 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 amendments.

The Bureau 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 Bureau 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.

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

Upon receiving approval during the August 12, 2021, Board meeting, the Bureau had a Notice of Proposed Regulation published in the August 27, 2021, *State Register*.

The Bureau held a virtual stakeholder meeting on September 8, 2021; three (3) individuals attended the meeting.

The Bureau received public comments from two (2) people by the September 27, 2021 close of the public comment period. A summary of the public comments received, and Department responses were provided to the Board.

After consideration of all timely received comments, staff has made substantive changes to the regulatory text of the Notice of Proposed Regulation approved by the Board in the August 12, 2021, Board meeting and published in the August 27, 2021, *State Register*. Descriptions of the changes, Summary of Public Comments, and Department Responses were provided to the Board.

The Bureau of Healthcare Systems and Service requested the Board find need and reasonableness of the proposed amendment of R.61-77, *Standards for Licensing Home Health Agencies*, for submission to the General Assembly.

Board Counsel, W. Marshall Taylor, opened the meeting up for public comments on this matter. Three members of the public spoke. (Attachment 7-2) The public hearing was closed.

After discussion, **Mr. Lee moved, seconded by Mr. Kinney, that based on the public hearing and documents herein, to find for the need and reasonableness of the proposed amendment of Regulation 61-77, *Standards for Home Health Agencies*, Document No. 5057, and grant approval for submission to the General Assembly for review with the revisions that**

**Section "803 transfer be modified to indicate that the home health agency shall provide requested patient record information to health care providers no later than two days following notification of the transfer to ensure continuity of care." The Board voted and Motion carried.**

A verbatim transcript of these proceedings is included as part of the official record. (Attachment 7-3)

**Item 8: Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-62, Air Pollution Control Regulations and Standards, Document No. 5056**

A Public Hearing was conducted concerning the Regulation. Ms. Mary Peyton Wall, Section Manager, Air Regulation, Data Analysis, and SIP Management, Environmental Affairs, presented this item to the Board.

The Bureau of Air Quality (Bureau) submitted the Notice of Final Regulation amending R.61-62, *Air Pollution Control Regulations and Standards*, for publication in the November 26, 2021, *South Carolina State Register (State Register)*. Legal authority 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 November 26, 2021, publication in the *State Register*.

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 60 and 63 include revisions to New Source Performance Standards (NSPS) and Emission Guidelines, and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories. 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, 2020, through December 31, 2020.

The Department is also amending R.61-62.5, Standard No. 7, *Prevention of Significant Deterioration (PSD)*, and R.61-62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR)*, and the State Implementation Plan (SIP), to incorporate EPA's clarification of Project Emissions Accounting, as published in the Federal Register on November 24, 2020 (85 FR 74890), 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 is also 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 is also making additional 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 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*.

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

The Bureau sent a copy of the Notice of Drafting to interested stakeholders via the Department email list on March 26, 2021. The Bureau also shared information about the Notice of Drafting and the Notice of Final Regulation and Public Hearing with stakeholders during the biannual Carolinas Air Pollution Control Association (CAPCA) meetings on April 8, 2021, and October 14, 2021, respectively.

Upon receiving approval during the August 12, 2021, Board meeting, the Bureau had a Notice of Proposed Regulation published in the August 27, 2021, *State Register*. The Department received two comments from EPA Region 4, and public comment from one person by September 27, 2021, the close of the public comment period. A summary of these public comments received and Department responses.

The Bureau sent a notice of publication of the Notice of Proposed Regulation to interested stakeholders via the Department email list on August 27, 2021. Additionally, on October 8, 2021, the Bureau provided the draft amendments to the affected facilities subject to R.61-62.60, Subpart Cf.

After consideration of all timely received comments, staff has made an error correction to the regulatory text of the Notice of Proposed Regulation approved by the Board in the August 12, 2021, Board meeting and published in the August 27, 2021, *State Register*. Description of the change, Summary of Public Comments, and Department Responses was provided to the Board.

The Bureau of Air Quality requested the Board find need and reasonableness of the amendments of R.61-62, *Air Pollution Control Regulations and Standards*, for legal effect as of November 26, 2021, publication in the *State Register*.

Board Counsel, W. Marshall Taylor, opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 8-2) The public hearing was closed.

After discussion, **Mr. Kinney moved, seconded by Mr. Lee, that based on the public hearing and documents provided, to find for the need and reasonableness of the proposed amendment of Regulation 61-62, *Air Pollution Control Regulations and Standards*, Document 5056, and grant approval for publication in the State Register. The Board voted and Motion carried.**

A verbatim transcript of these proceedings is included as part of the official record. (Attachment 8-3)

**Item 9: Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, Document No. 5058**

A Public Hearing was conducted concerning the Regulation. Ms. Stacey French, Director, Division of Waste Management, Environmental Affairs, presented this item to the Board.

The Bureau of Land and Waste Management ("Bureau") proposed the Notice of Final Regulation amending R.61-79, *Hazardous Waste Management Regulations*. 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, *South Carolina 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.

Upon receiving approval during the August 12, 2021, Board meeting, the Bureau had a Notice of Proposed Regulation published in the August 27, 2021, *South Carolina State Register*. The Bureau received no comments during the public comment period.

The Bureau requested the Board find need and reasonableness of the proposed amendment of R.61-79, *Hazardous Waste Management Regulations*, for submission to the General Assembly.

Board Counsel, W. Marshall Taylor, opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 9-2) The public hearing was closed.

After discussion, **Mr. Lee moved, seconded by Ms. Shrivastava-Patel, that based on the public hearing and documents provided, to find for the need and reasonableness of the proposed amendment of Regulation 61-79, *Hazardous Waste Management Regulations*, Document 5058, and grant approval for submission to the General Assembly for review. The Board voted and Motion carried.**

A verbatim transcript of these proceedings is included as part of the official record. (Attachment 9-3)



**Item 10: Election of Officers**

Vice-Chairman Creel asked for nominations of Board Members to serve as Vice-Chairman.

Chairman Elam nominated Ms. Seema Shrivastava-Patel to serve as Vice-Chairman of the Board. Vice-Chairman Creel asked for any additional nominations, hearing none, he asked for a motion to close the nominations. Chairman Elam moved, seconded by Dr. Brown, to close nominations for Vice-Chairman. The Board voted and the motion carried, and the nominations were closed. With no other nominees, a vote was not required, and Ms. Shrivastava-Patel was elected to serve as Vice Chair by acclamation.

Vice-Chairman Creel asked for nominations of Board Members to serve as Secretary.

Mr. Lee nominated Mr. Charles M. Joye, II, P.E. to serve as Secretary of the Board. Vice-Chairman Creel asked for any additional nominations, hearing none, he asked for a motion to close the nominations. Mr. Kinney moved, seconded by Mr. Lee, to close nominations for Secretary. The Board voted and the motion carried, and the nominations were closed. With no other nominees, a vote was not required, and Mr. Joye was elected to serve as Secretary by acclamation.

Being no further business, Vice-Chairman Creel adjourned the meeting.

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

Respectfully submitted,

  
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Charles M. Joye, II, PE, Secretary

Minutes approved this 9<sup>th</sup> day of December 2021.

ATTEST:

  
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Jim P. Creel, Jr., Vice-Chairman

## Attachments

- 0-1 Agenda
- 0-2 Sign in Sheet
- 1-1 Minutes of October 7, 2021 meeting
- 3-1 SHaPE SC Task Force Report
- 3-2 Department Response to SHaPE SC Task Force Report
- 3-3 Letter from South Carolina Mental Health Commission
- 4-1 Administrative Orders and Consent Orders issued by Healthcare Quality
- 5-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 6-1 Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-7, *Emergency Medical Services*, Document No. 5055
- 7-1 Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-77, *Standards for Home Health Agencies*, Document No. 5057
- 7-2 Public Hearing Sign Up Sheet
- 7-3 Verbatim transcript of public hearing
- 8-1 Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-62, *Air Pollution Control Regulations and Standards*, Document No. 5056
- 8-2 Public Hearing Sign Up Sheet
- 8-3 Verbatim transcript of public hearing
- 9-1 Public Hearing and Request for Final Approval, Proposed Amendment of Regulation 61-79, *Hazardous Waste Management Regulations*, Document No. 5058
- 9-2 Public Hearing Sign Up Sheet
- 9-3 Verbatim transcript of public hearing