



**Board:**

Mark Elam, Chairman  
David W. Gillespie, MD, Vice-Chairman  
Charles M. Joye II, P.E., Secretary

Richard (Rick) Toomey, DHA, FACHE  
Seema Shrivastava-Patel  
Jim Creel, Jr.

**Minutes of the December 13, 2018, meeting of the  
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, December 13, 2018, at 10:00 a.m. in the Boardroom (#3420) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Mark Elam, Chairman  
Richard Toomey, DHA, FACHE, 1<sup>st</sup> District  
Seema Shrivastava-Patel, 2<sup>nd</sup> District  
David W. Gillespie, MD, 6<sup>th</sup> District  
Jim Creel, Jr., 7<sup>th</sup> District

Charles M. Joye, II, P.E., 3<sup>rd</sup> District, via GoToMeeting.

4<sup>th</sup> and 5<sup>th</sup> Congressional District seats are currently vacant.

Also, in attendance were David E. Wilson, Acting Director; W. Marshall Taylor, Legal Counsel; Lisa Lucas Longshore, Clerk; Department staff and members of the public. (Attachment 0-2)

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 the November 8, 2018, meeting** (Attachment 1-1)

***Dr. Gillespie moved, seconded by Mr. Creel, to approve the minutes of the November 8 meeting as presented. The Board voted and Motion carried.***

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

Ms. Bentley White, Director, Health Regulation Policy and Communications, stated for this reporting period ten (10) Consent Orders had been issued with assessed penalties totaling \$26,450.

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

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

Ms. Robin Stephens, Assistant to Deputy Director of Environmental Affairs, stated that for this reporting period eighty-one (81) Consent Orders and two (2) Consent Agreements had been issued with assessed penalties totaling \$108,146.

***The Board accepted this item as information.***

**Item 4: Public Hearing for Notice of Final Regulation -- Proposed Repeal of Regulation 61-67.1, Requirements for State Water Pollution Control Revolving Fund Loan Assistance, Document No. 4838, Review by General Assembly is required** (Attachment 4-1)

Mr. Shawn Clarke, Bureau of Water, presented this item to the Board.

The Bureau proposed repeal of R.61-67.1. The regulation describes the process the Department of Health and Environmental Control ("Department") and the former South Carolina Budget and Control Board followed in administering the State Water Pollution Revolving Fund received in federal grants from the Environmental Protection Agency ("EPA"). In 1992, the General Assembly repealed S.C. Code Section 48-6-10 et seq. and replaced it with the South Carolina Water Quality Revolving Fund Authority Act (S.C. Code Section 48-5-10 et seq.). Passage of the South Carolina Water Quality Revolving Fund Authority Act ("Act") has rendered R.61-67.1 obsolete. The Act provides authority for the Department and the South Carolina Water Quality Revolving Fund Authority to administer the South Carolina clean water and drinking water revolving funds and federal grants received as supplements to the revolving funds from the EPA. The South Carolina Water Quality Revolving Fund Authority comprises the members of the State Fiscal Accountability Authority, with administrative and implementation support from the South Carolina Rural Infrastructure Authority ("RIA").

In accordance with the Act, the State Water Pollution Revolving Fund ("SRF") authorized under the former statute (Title 48, Chapter 6) remains in existence and is now referred to as the Clean Water State Revolving Fund ("CWSRF"). The CWSRF, like the former State Water Pollution Revolving Fund, provides low interest loans to public utilities and local governments for wastewater and stormwater infrastructure projects. The General Assembly amended Title 48, Chapter 5 in 1997 to include the Drinking Water State Revolving Fund ("DWSRF"), which provides low interest loans to public utilities and local governments for public drinking water infrastructure projects. The 1987 amendments to the Federal Water Pollution Act, otherwise known as the Clean Water Act, authorized federal funding for the CWSRF and the former State Water Pollution Revolving Fund. The 1996 amendments to the Safe Drinking Water Act authorized federal funding for the DWSRF. The CWSRF and DWSRF are revolving funds because they receive repayments and interest from the loans made from the funds. Additional money comes into the funds through interest on investments and annual federal grants received from EPA. Repeal of the regulation will have no impact or implications for the current administration and implementation of the CWSRF or DWSRF.

The Department does not propose replacing this regulation with a new regulation. The Department and RIA can effectively administer and implement the SRF program using the state statute, Title 48, Chapter 5, and federal laws, regulations, and grant requirements that govern the use of the funds. Other existing state laws and regulations also are used to implement the program such as environmental permitting regulations that govern the design and construction of wastewater and drinking water infrastructure projects.

Mr. Taylor opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 4-2)

After discussion, ***Mr. Creel moved, seconded by Mr. Toomey, that based on the public hearing and documents herein, to find for the need and reasonableness of the Proposed Repeal of Regulation 61-67.1, Requirements for State Water Pollution Control Revolving Fund Loan Assistance, Document No. 4838, 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 4-3)

**Item 5: Public Hearing for Notice of Final Regulation – Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, Document No. 4841** (Attachment 5-1)

Mr. Joe Bowers, Program Manager, Bureau of Land and Waste Management, presented this item to the Board.

The Bureau proposed amending R.61-79, Hazardous Waste Management Regulations, to adopt the Environmental Protection Agency's ("EPA") Hazardous Waste Generator Improvements Rule published November 28, 2016, at 81 FR 85732-85829. The Hazardous Waste Generator Improvements Rule reorganizes the hazardous waste generator regulations to improve their usability by the regulated community, provide a better understanding of how the Resource Conservation and Recovery Act ("RCRA") hazardous waste generator regulatory program works, address gaps in existing regulations to strengthen environmental protections, provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner, and make technical corrections to address inadvertent errors and remove obsolete references to programs that no longer exist.

Mr. Taylor opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 5-2)

***Dr. Gillespie moved, seconded by Mr. Creel, that based on the public hearing and documents herein, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, Document No. 4841, 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 5-3)

**Item 6: Public Hearing for Notice of Final Regulation – Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations (exempt from General Assembly Review), Document No. 4840** (Attachment 6-1)

Mr. Joe Bowers, Program Manager, Bureau of Land and Waste Management, presented this item to the Board.

The Bureau proposed amending R.61-79, *Hazardous Waste Management Regulations*, to adopt the Imports and Exports of Hazardous Waste Rule published November 28, 2016, and published on August 29, 2017, at in the Federal Register by the United States Environmental Protection Agency ("EPA"). The Imports and Exports of Hazardous Waste Rule amends existing requirements regarding the import and export of hazardous wastes from and into the United States. The Department proposed adopting the rule to maintain compliance with federal law and provide greater protection to human health and the environment by making existing import- and export-related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development, enabling electronic submittal to the EPA of all import- and export-related documents (e.g., export notices, export annual reports), and enabling electronic validation of consent in the Automated Export System for export shipments subject to the Resource Conservation and Recovery Act ("RCRA") export consent requirements prior to exit.

Mr. Taylor opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 6-2)

***Mr. Toomey moved, seconded by Dr. Gillespie, that based on the public hearing and documents herein, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, Document No. 4840, and grant approval to publish the attached Notice of Final Regulation for legal effect as of the December 28, 2018 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 6-3)

**Item 7: Public Hearing for Notice of Final Regulation – Proposed Amendment of Regulation 61-120, South Carolina Immunization Registry, Document No. 4837** (Attachment 7-1)

Mr. Thomas Bowen, Policy Liaison for Public Health, presented this item to the Board.

Regulation 61-120, *South Carolina Immunization Registry*, is governed by S.C. Code Section 44-29-40, which grants the Department general direction and supervision of vaccination, screening, and immunization in the state. Section 44-29-40(B) charges the Department with establishing a statewide immunization registry and promulgating regulations for the implementation and operation of the registry. The Bureau proposes amending R.61-120 to enable provision of specific Healthcare Effectiveness Data and Information Set ("HEDIS") data from the South Carolina Immunization Registry ("Registry") to health plans for public health purposes and to measure performance on important dimensions of care and service, including immunization data for clients. Furthermore, the amendments detail the availability and use of a patient portal, which will be a feature of a new Registry allowing patients to access their personal immunization records. Patients will be able to access their personal immunization records once the new Registry becomes active without the need of going through one's healthcare provider. The amendments also remove obsolete language and make general improvements and clarifications to the text.

Mr. Bowen provided the Board with a letter from National Committee for Quality Assurance (NCQA) supporting the proposed amendment. (Attachment 7-2)

Mr. Taylor opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 7-3)

After discussion, ***Mr. Creel moved, seconded by Dr. Gillespie, that based on the public hearing and documents herein, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-120, South Carolina Immunization Registry, Document No. 4837, 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 7-4)

**Item 8: Public Hearing for Notice of Final Regulation -- Proposed Amendment of Regulation 61-25, Retail Food Establishments, and Proposed Repeal Regulation 61-37, Retail Food Establishment Inspection Fees, Document No. 4842** (Attachment 8-1)

Ms. Sandra Craig, Director, Bureau of Food Protection and Rabies Prevention, presented this item to the Board.

The intent of Regulation 61-25, *Retail Food Establishments*, is to safeguard public health and provide consumers safe, unadulterated food and food products at the retail level. This regulation governs restaurants, grocery stores, school cafeterias, and other establishments preparing and serving food to the public. The Department last amended R.61-25, *Retail Food Establishments*, in 2014. These amendments will allow the Department, through regulation, to incorporate standards of the 2017 United States Food and Drug Administration ("FDA") Food Code. The FDA Food Code is the national standard for practical, science-based guidance that addresses the risk factors known to cause foodborne illness outbreaks in retail food establishment settings. The amendments also include proposed revisions to selected sections of R.61-25 to reflect the current business models of the food service industry based on comments and suggestions from the regulated community. The amendments, furthermore, include combining R.61-25 with revised provisions of R.61-37, *Retail Food Establishment Inspection Fees*, which was last amended in 2002. Specifically, the Bureau proposes revising fee schedules currently residing in R.61-37, placing the fee schedules in R.61-25, and repealing R.61-37. This would provide the retail food industry with one streamlined regulation while allowing for necessary program support through an increase in inspection fees. Finally, these amendments include other changes deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation. These proposed changes include, but are not limited to, stylistic changes, updates to definitions and exemptions, corrections for clarity, readability, grammar, punctuation, references, codification, and overall improvement of the text of the regulation.

The Bureau held a series of five (5) stakeholder meetings across the state in advance of the Notice of Drafting period. The Bureau sent email invitations to more than 19,000 permitted retail food establishments as well as interested trade associations and individuals. Additionally, meeting information was posted on the Department's food industry website. The following information shows the date, location, and attendance numbers for each meeting:

April 26, 2018, Columbia (40)

April 27, 2018, Rock Hill (12)

April 30, 2018, Greenville (76)

May 2, 2018, Myrtle Beach (40)

May 4, 2018, Mt. Pleasant (27).

In October 2018, the Bureau held five (5) additional stakeholder meetings in advance of the publication of the Notice of Proposed Regulation. The Bureau sent email invitations to more than 19,000 permitted retail food establishments as well as interested trade associations and individuals. The Bureau also had meeting information posted on the Department's food industry website. The following information shows the date, location, and attendance numbers for each meeting:

October 3, 2018, Beaufort (8)

October 8, 2018, Greenville (38)

October 15, 2018, Florence (6)

October 15, 2018, Myrtle Beach (27)

October 17, 2018, Charleston (28)

Ms. Craig provided the Board with comments received from YUM! Brands, Inc. supporting the proposed amendments. (Attachment 8-2)

Mr. Taylor opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 8-3)

After discussion, ***Mr. Creel moved, seconded by Mr. Joye, that based on the public hearing and documents herein, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-25, Retail Food Establishments, and Proposed Repeal Regulation 61-37, Retail Food Establishment Inspection Fees, Document No. 4842, 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 8-4)

**Item 9: Agency Affairs**

Acting Director Wilson briefed the Board on the Executive Leadership Team Retreat that was held on December 3 and then introduced Dr. Lillian Peake, Deputy Director for Public Health, who gave a presentation on Live Healthy South Carolina, a partnership with the Alliance for a Healthier South Carolina. (Attachment 9-1)

**Item 10: Appointment of Acting Director to serve from December 29, 2018, until a new Director is appointed by the Board, approved by the Governor and confirmed by the Senate**

Chairman Elam asked for a Motion to go into Executive Session to discuss a personnel matter.

***Mr. Creel moved, seconded by Dr. Gillespie, to go into Executive Session to discuss a personnel issue. The Board voted, and Motion carried.***

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

***Dr. Gillespie moved, seconded by Mr. Creel, to appoint Marshall Taylor as Acting Director to serve from December 29, 2018 until a new Director is appointed by the Board, approved by the Governor and confirmed by the Senate. The Board voted and Motion carried.***

**Item 11: Executive Session for discussion of a personnel matter**

***Dr. Gillespie moved, seconded by Mr. Joye, to go into Executive Session to discuss a personnel issue. The Board voted, and Motion carried.***

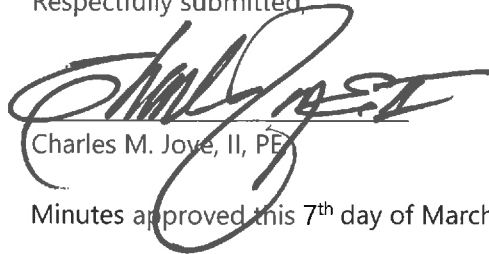
*Clerk of Board Note: Mr. Toomey provided a Statement of Recusal for this Executive Session. (Attachment 11-1)*

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

Being no further business, the meeting adjourned.

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

Respectfully submitted,



Charles M. Jove, II, PE

Minutes approved this 7<sup>th</sup> day of March 2018.

ATTEST:



Mark R. Elam, Chairman

#### Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of November 8, 2018 meeting
- 2-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 3-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 4-1 **Public Hearing** -- Proposed Repeal of Regulation 61-67.1, Requirements for State Water Pollution Control Revolving Fund Loan Assistance, Document No. 4838
- 4-2 Public Hearing Sign-in Sheet
- 4-3 Verbatim Transcript of public hearing proceedings
- 5-1 **Public Hearing** -- Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, Document No. 4841
- 5-2 Public Hearing Sign-in Sheet
- 5-3 Verbatim Transcript of public hearing proceedings
- 6-1 **Public Hearing** -- Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations (exempt from General Assembly Review), Document No. 4840
- 6-2 Public Hearing Sign-in Sheet
- 6-3 Verbatim Transcript of public hearing proceedings
- 7-1 **Public Hearing** -- Proposed Amendment of Regulation 61-120, South Carolina Immunization Registry, Document No. 4837
- 7-2 Comments received in support of regulation amendments
- 7-3 Public Hearing Sign-in Sheet
- 7-4 Verbatim Transcript of public hearing proceedings
- 8-1 **Public Hearing** -- Proposed Amendment of Regulation 61-25, Retail Food Establishments, and Proposed Repeal Regulation 61-37, Retail Food Establishment Inspection Fees, Document No. 4842
- 8-2 Comments received in support of regulation amendments
- 8-3 Public Hearing Sign-in Sheet
- 8-4 Verbatim Transcript of public hearing proceedings
- 9-1 Live Healthy South Carolina
- 11-1 Rick Toomey statement of recusal from Executive Session proceedings