



Board:

Allen Amsler, *Chairman*
Ann B. Kirol, DDS, *Secretary*
R. Kenyon Wells

Charles M. Joye II, P.E.
L. Clarence Batts, Jr.
David W. Gillespie, MD

Minutes of the December 8, 2016 meeting of the
South Carolina Board of Health and Environmental Control

The South Carolina Board of Health and Environmental Control met on Thursday, December 8, 2016, at 10:00 a.m. in the Board Room of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman, Member-at-Large
R. Kenyon Wells, 2nd District
Charles M. Joye, II, P.E., 3rd District
L. Clarence Batts, 4th District
David W. Gillespie, MD, 6th District

By Phone:

Ann B. Kirol, DDS, Secretary, 5th District

1st District and 7th District seats are currently vacant.

Also in attendance were Catherine E. Heigel, Director; W. Marshall Taylor, Jr., General Counsel; Lisa L. Longshore, Clerk; Department staff and a member of the public. (Attachment 0-2) *Note: The meetings are now being live streamed and attendance by the public has decreased.*

Chairman Amsler 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 November 10 2016, meeting (Attachment 1-1)

Mr. Joye moved, seconded by Mr. Wells, to approve the minutes as presented for the November 10, 2016, Board meeting. The Board voted and Motion carried.

Item 2: Administrative and Consent Orders issued by Environmental Affairs (Attachment 2-1)

Ms. Robin Stephens, Compliance Assistance and Enforcement, Environmental Affairs, stated sixty-three (63) Consent Orders had been issued with total penalties of \$120,858.

The Board accepted this item as information.

Item 3: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (Attachment 3-1)

Mr. Thomas Bowen, Senior Consultant, Health Regulation Policy and Communications, stated one (1) Administrative Order had been issued with no assessed penalties.

The Board accepted this item as information.

Item 4: Proposed Amendment of Regulation 61-16, Minimum Standards for Licensing Hospitals and General Infirmaries. Legislative Review is required (Attachment 4-1)

Ms. Gwen Thompson, Chief, Bureau of Health Facility Licensing, presented this item to the Board.

The Department proposed amendments to incorporate provisions as follows:

- to allow dietitians to prescribe diets and other dietary services;
- the new requirements of S.C. Code Sections 44-41-410 through 480 relating to the provision of abortion services;
- existing inspection and construction fees;
- new requirements relating to safe havens.

After discussion, ***Mr. Batts moved, seconded by Dr. Gillespie, to grant approval to publish a Notice of Proposed Regulation 61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, 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 unanimously.***

Item 5: Public Hearing and Request for Final Approval - Proposed Amendments of Regulation 61-92, Underground Storage Tank Control Regulations, State Register Document No. 4706. Legislative Review is required (Attachment 5-2)

Mr. Mihir Mehta, Director, UST Management Division, presented this item to the Board.

The Department proposed amendments as follows:

- to adopt the federal underground storage tank (UST) requirements of 40 CFR Part 280, effective October 13, 2015, and revising portions of R. 61-92, Part 280 pertaining to compliance requirements of the Underground Storage Tank Control Regulations;
- to reorganize the regulations for clarity and consistency with the format of the revised federal regulation, along with other stylistic changes to improve the overall quality of the Regulation.

The Board was provided an addendum to the Board Package. (Attachment 5-2)

A public hearing was conducted, and no one in attendance requested the opportunity to speak. (Attachment 5-3)

After discussion, ***Dr. Gillespie moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-92, Underground Storage Tank***

Control Regulations, and approve it for submission to the Legislature for review. The Board voted and Motion carried unanimously.

A verbatim transcript of this proceeding is included as part of the record. (Attachment 5-4)

Item 6: Public Hearing and Request for Final Approval - Proposed Amendment of Regulation 61-33, Drycleaning Facility Restoration Regulations, State Register Document No. 4705, Legislative Review is required (Attachment 6-1)

Mr. Robert Hodges, Manager, Brownfields and Drycleaning, presented this item to the Board.

On May 21, 2013, South Carolina Governor Nikki Haley signed into law a revised version of the South Carolina Hazardous Waste Management Act (the Act) which establishes the Drycleaning Facility Restoration Trust Fund. Revisions were made to better organize and clarify the Act, as well as to delete obsolete provisions.

The Department proposed amending R.61-33 to better conform the regulation to the revised South Carolina Hazardous Waste Management Act. The amendments, which revise the regulation title, also make stylistic changes for internal consistency, clarification in wording, corrections of references and grammatical errors, outlining/codification, and such other changes as may be necessary to improve the overall quality of the regulation.

A public hearing was conducted, and no one in attendance requested the opportunity to speak. (Attachment 6-2)

After discussion, ***Mr. Wells moved, seconded by Mr. Joye, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-33, Drycleaning Facility Restoration Regulations, and approve it for submission to the Legislature for review. The Board voted and Motion carried unanimously.***

A verbatim transcript of this proceeding is included as part of the record. (Attachment 6-3)

Item 7: Public Hearing and Request for Final Approval - Proposed Amendment of Regulation 61-22, The Evaluation of School Employees for Tuberculosis, State Register Document No. 4704, Legislative Review is required (Attachment 7-1)

Dr. Melissa Overman, Division of Acute Disease Epidemiology, presented this item to the Board.

Regulation 61-22, The Evaluation of School Employees for Tuberculosis, was promulgated pursuant to Section 44-29-150 of the South Carolina Code of Laws, which authorizes the Department of Health and Environmental Control ("DHEC" or the "Department") to promulgate guidelines for the evaluation of staff of any public or private school, kindergarten, nursery or day care center for infants and children as a pre-condition to employment and as a condition of continued employment.

The Department proposed to amend R.61-22 as follows:

- to incorporate recommended changes identified by staff during internal review, including integrating of current tuberculosis evaluation and preventive treatment guidelines, updating the screening/evaluation requirements for schools and child care settings, clarifying

language relating to issuing, completion and retention of certificates of tuberculosis evaluation and language relating to requirements for new hires, and providing for consistency with applicable state and federal laws;

- to incorporate stylistic changes, which include corrections for clarity, readability, grammar, punctuation and overall improvement of the text.
- To align the Department with advancements and best practices in tuberculosis evaluation.

The proposed amendments will have no substantial negative fiscal or economic impact on the State and its political subdivisions or the regulated community as employees in schools and child care settings are currently required to be evaluated for tuberculosis as a condition of employment. In fact, these amendments are designed to lower the financial and human resources burdens on schools and child care centers while continuing to afford protection against tuberculosis in these settings consistent with best practices.

A public hearing was conducted, and no one in attendance requested the opportunity to speak. (Attachment 7-2)

After discussion, ***Dr. Gillespie moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-22, The Evaluation of School Employees for Tuberculosis, and approve it for submission to the Legislature for review. The Board voted and Motion carried unanimously.***

A verbatim transcript of this proceeding is included as part of the record. (Attachment 7-3)

Item 8: Placement of Furanyl Fentanyl into Schedule I for Controlled Substances (Attachment 8-1)

Ms. Anne Marie Ravenna, Bureau of Drug Control, presented this item to the Board.

Controlled substances are governed by the S.C. Controlled Substances Act (CSA), found at Title 44, Chapter 53, of the S.C. Code of Laws. Section 44-53-160 is titled "Manner in which changes in schedule of controlled substances shall be made." Pursuant to Section 44-53-160, controlled substances are generally designated by the General Assembly, upon recommendation by DHEC. Schedule I substances are listed in § 44-53-190. Section 44-53-160(C) provides a process by which DHEC can expeditiously designate a substance as a controlled substance if the federal government has so designated.

§ 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 Chairman 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.

The U.S. Department of Justice, Drug Enforcement Administration (DEA), published on September 27, 2016, its notice of intent to temporarily schedule the synthetic opioid, N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (furanyl fentanyl), and its isomers, esters, ethers, salts and salts of isomers, esters, and ethers into Schedule I, pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action was based on a finding by the Administrator that the placement of this synthetic opioid into Schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. The DEA further noted its intent to publish its final order following the required 30-day notice period.

On November 29, 2016, the DEA published its final order to temporarily schedule furanyl fentanyl into Schedule I of the Federal CSA.

The DEA is currently aware of at least 128 confirmed fatalities associated with furanyl fentanyl. Based on documented case reports of overdose fatalities, the abuse of furanyl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

After discussion, ***Mr. Batts moved, seconded by Mr. Joye, to designate the additional substances as named in the DEA Notice of intent published in the Federal Register on November 29, 2016, and amend Section 44-53-190 of the S.C. Controlled Substances Act for consistency with the Federal scheduling. The Board voted and Motion carried unanimously.*** Signed Designation Document – Attachment 8-2

Item 9: Staff Recommendation – Wave Dissipation System (Attachment 9-1)

Mr. Blair Williams, Wetlands Section Manager, presented this item to the Board.

Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) authorized "[t]he deployment of a qualified wave dissipation device seaward of the setback line or baseline pursuant to a study conducted by the Citadel or a research university." From March through September 2015, researchers from The Citadel submitted formal requests to the Department to perform a study of the Wave Dissipation System (WDS) at the following locations: Ocean Club Villas, Beachwood East and Seascape Villas in the Wild Dunes community, Isle of Palms, SC; and Harbor Island, St. Helena, SC. The Department acknowledged that the proposed research projects at the above referenced locations met the "research activities of a State educational institution" exception and did not require a direct critical area permit provided conditions were met. The Citadel's WDS research projects ended on July 28, 2016. Data collected from the study was provided to the Department in a final report from The Citadel on August 28, 2016.

The Department contracted with GEL Engineering to collect data and information on the design and functionality of the WDS research projects, and provide a third party evaluation of the findings in a final report. GEL collected information between March and July 2016, and the final report was submitted to the Department on October 31, 2016. The Department was tasked with determining whether the WDS was successful in addressing an erosional issue and whether it is allowed for continued use in emergency situations. Data and information from The Citadel's final report and GEL Engineering's final report, along with Department observations and evaluations, were considered in formulating this recommendation.

Department staff concluded that the WDS has not been successful in addressing an erosional issue and resulted in negative impacts to the beach. Staff is therefore recommending that this technology, methodology or structure not be approved for future or continued use at these pilot locations or additional locations. Observations and survey data results collected during the study demonstrated that the WDS does not hold the scarp line position at locations where the WDS was the sole erosion mitigation technique. The scarp line stabilized in areas where properties employed sandbags for additional protection. Survey data collected by GEL Engineering documented the loss of sand volume landward of (behind) the WDS. Net accretion of sand observed by GEL during the study was always on the seaward side (in front) of the WDS. Sand volume data indicates that the WDS does not increase or retain sand landward of (behind) the system and blocks the natural accretion of sand on the shoreline during calm conditions.

Other impacts to the beach were observed including trenching and scouring around the WDS, impacts of periodic excavations, impacts to adjacent properties, and similar issues associated with seawalls. Impacts on lateral public beach access and potential effects on sea turtles were also noted. (Attachment 9-2)

Dr. Gillespie recused himself from Action in this matter. (Attachment 9-3)

After discussion, ***Mr. Batts moved, seconded by Mr. Wells, to grant approval to publish the Staff Recommendation for a 45-day public comment period and for the Board to conduct a public hearing to receive additional information for consideration in determining a final agency decision.***

After further discussion, ***Mr. Joye moved to amend the original motion to 120 day public comment period. After discussion, Mr. Joye compromised to a 60 day public comment period. Mr. Wells seconded the amendment to the Motion. The Board voted and the Motion carried as amended.***

Item 10: Agency Affairs

Director Heigel reported on the following:

- Agency response to the Wild Fires in the upstate;
- Flu Shot reminder;
- Introduction of Dr. Lillian Peake as Deputy Director of Public Health.

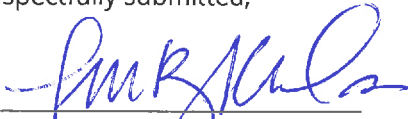
Chairman Amsler asked for a brief executive session for the purpose of discussing a Personnel matter. Mr. Wells seconded. The Board voted and Motion carried.

Mr. Amsler announced the Board was back in public session and while in Executive Session no actions were taken.

Having no further business, Chairman Amsler adjourned the meeting.

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

Respectfully submitted,



Ann B. Kirol, DDS, Secretary

Minutes approved this 5th day of January 2017.

ATTEST:



Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 November 10, 2016 minutes
- 2-1 Administrative and Consent Orders issued by Environmental Affairs
- 3-1 Administrative Orders, Consent Orders and Sanctions issued by Health Regulation
- 4-1 Proposed Amendment of R.61-16, Minimum Standards for Licensing Hospitals and General Infirmaries
- 5-1 Public Hearing & Request for Final Approval Proposed Amendment of R.61-92, Underground Storage Tank Control Regulations
- 5-2 Addendum to Board Package
- 5-3 Public Hearing sign-in sheet
- 5-4 Verbatim Transcript
- 6-1 Public Hearing & Request for Final Approval Proposed Amendment of R.61-33, Drycleaning Facility Restoration Regulations
- 5-2 Public Hearing sign-in sheet
- 5-3 Verbatim Transcript
- 7-1 Public Hearing and Request for Approval Proposed Amendment of R.61-22, The Evaluation of School Employees for Tuberculosis
- 7-2 Public Hearing Sign-in Sheet
- 7-3 Verbatim Transcript
- 8-1 Placement of Furanyl Fentanyl into Schedule I for Controlled Substances
- 8-2 Signed Designation Document
- 9-1 Staff Recommendation – Wave Dissipation System
- 9-2 PowerPoint Presentation
- 9-3 Statement of Recusal by Dr. Gillespie