



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

**Board:**  
Seema Shrivastava-Patel  
Richard V. Lee, Jr.  
Jim Creel, Jr.

## **Minutes of the May 9, 2019, meeting of the South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, May 9, 2019, 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  
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  
David W. Gillespie, MD, 6<sup>th</sup> District

In attendance via telephone  
Jim Creel, Jr., 7<sup>th</sup> District.

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

Also, in attendance were Richard K. Toomey, Director; W. Marshall Taylor, Legal Counsel; Kim Warnock, Acting 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 March 7, 2019 meeting** (Attachment 1-1)

***Mr. Joye moved, seconded by Dr. Gillespie, to approve the minutes as presented. The Board voted and Motion carried.*** Mr. Lee abstained from the vote.

### **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 six (6) Consent Orders had been issued with assessed penalties totaling \$6,200.

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

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

Mr. Michael Traynham, Associate General Counsel for Environmental Affairs, stated that for this reporting period thirteen (13) Administrative Orders, one hundred fifty-two (152) Consent Orders and one (1) Consent Agreement had been issued with assessed penalties totaling \$316,107.

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

**Item 4: Placement of Synthetic Cannabinoids -- 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I of SC Controlled Substance Act** (Attachment 4-1)

Ms. Heather Lukshis, Bureau of Drug Control, presented this item to the Board.

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 DHEC. Section 44-53-160(C) provides a process for the Department to expeditiously designate a substance if the federal government has so designated.

On April 16, 2019, the Acting Administrator of the federal Drug Enforcement Administration issued a temporary scheduling order in the Federal Register to schedule the synthetic cannabinoids ("SCs") ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5FEDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)); 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers in schedule I. 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. 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. The federal temporary scheduling order for these five synthetic cannabinoids became effective April 16, 2019.

The Acting Administrator of the Drug Enforcement Administration determined that the temporary scheduling of these SCs in schedule I of the federal Controlled Substances Act was necessary to avoid an 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, or possess), or propose to handle, 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144. To make this determination, the Administrator was required to consider the substances' history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

After discussion, **Mr. Lee moved, seconded by Ms. Shrivastava-Patel, to designate the additional substances named in the DEA Notice published in the Federal Register on April 16, 2019 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.** Scheduling document signed by Board Chairman. (Attachment 4-2)

**Item 5: Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, General Assembly Review is not required**  
(Attachment 5-1)

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

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 S.C. Administrative Procedures Act exempts these amendments from General Assembly review, as the Department promulgates these amendments for compliance with federal air pollution control laws.

The Department proposes to amend as follows:

- to adopt the federal amendments to 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* promulgated from January 1, 2018, through December 31, 2018;
- to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law of R.61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units.

After discussion, ***Dr. Gillespie moved, seconded by Mr. Creel, 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.***

**Item 6: Notice of Proposed Regulation Amending Regulation 61-79, Hazardous Waste Management Regulations** (Attachment 6-1)

Mr. Joe Bowers, Division of Waste Management, presented this item to the Board.

The South Carolina Hazardous Waste Management Act authorizes the 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 requires General Assembly review of these amendments.

The Department proposes to amend as follows:

- to adopt the "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, and May 30, 2018. This United States Environmental Protection Agency ("EPA") rule revised several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to encourage recycling of hazardous waste;
- to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

After discussion, ***Dr. Gillespie 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 7: Notice of Proposed Regulation Amending Regulation 61-79, Hazardous Waste Management Regulations, General Assembly Review is not required**  
(Attachment 7-1)

Mr. Joe Bowers, Division of Waste Management, presented this item to the Board.

South Carolina Hazardous Waste Management Act authorizes the 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 exempts these amendments from General Assembly review, as the Department proposes the amendments for compliance with federal law.

The Department proposed amendments to adopt three final rules published in the Federal Register by the United States Environmental Protection Agency ("EPA"). The EPA requires state adoption of these rules, as the rules do not revise existing standards to make them less stringent, as follows:

- the "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," published on May 30, 2018;
- the "Confidentiality Determinations for Hazardous Waste Export and Import Documents," published on December 26, 2017;
- and the "Hazardous Waste Electronic Manifest System User Fee; Final Rule," published on January 3, 2018.

After discussion, ***Dr. Gillespie moved, seconded by Ms. Seema 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 Repealing Regulation 61-23, Control of Anthrax*** (Attachment 8-1)

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

South Carolina Code Section 44-1-140 allows the Department to make rules for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health. The Administrative Procedures Act requires General Assembly review of this proposed repeal.

The Department promulgated R.61-23 in July of 1960 to prevent and/or control the ownership, possession, or transport of anthrax into or through the state. This regulation is no longer needed, as the federal government established Select Agent Regulations, at Code of Federal Regulations Title 7, Part 331 and Title 9, Part 121, effective February 7, 2003, setting

forth requirements for possession, use, and transfer of select agents and toxins. The Federal Select Agent Program oversees and regulates the possession, use, and transfer of biological agents.

After discussion, ***Mr. Lee moved, seconded by Mr. Joye, to grant approval to publish the Notice of Proposed Regulation repealing Regulation 61-23, Control of Anthrax, 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.***

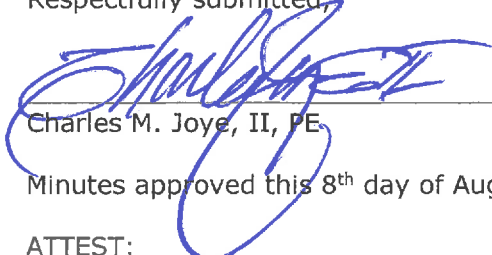
**Item 9: Agency Affairs**

Director Toomey introduced Mr. Nick Davidson who gave a presentation on Public Health Accreditation (Attachment 9-1). Mr. Toomey provided information to the Board on the "Don't Waste Food SC" campaign. (Attachment 9-2)

Be no further business, Chairman Elam adjourned the meeting.

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

Respectfully submitted,



Charles M. Joye, II, PE

Minutes approved this 8<sup>th</sup> day of August 2019.

ATTEST:



Mark R. Elam, Chairman

#### Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 March 7, 2019 minutes
- 2-1 Administrative and Consent Orders issued by Health Regulation
- 3-1 Administrative and Consent Orders issued by Environmental Affairs
- 4-1 Placement of Synthetic Cannabinoids -- 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I of SC Controlled Substance Act
- 4-2 Controlled Substance Scheduling document
- 5-1 Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, General Assembly Review is not required
- 6-1 Notice of Proposed Regulation Amending Regulation 61-79, Hazardous Waste Management Regulations
- 7-1 Notice of Proposed Regulation Amending Regulation 61-79, Hazardous Waste Management Regulations, General Assembly Review is not required
- 8-1 Notice of Proposed Regulation Repealing Regulation 61-23, Control of Anthrax
- 9-1 Public Health Accreditation
- 9-2 Don't Waste Food SC campaign