Board:
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William Lee Hewitt, III

South Carolina Board of Health and Environmental Control

Agenda
September 8, 2016

Call to Order – 10:00 a.m., Board Room (#3420)
South Carolina Department of Health and Environmental Control
2600 Bull Street, Columbia, S.C.

1. Minutes of August 11, 2016, meeting

2. Administrative Orders and Consent Orders issued by Environmental Affairs

3. Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation

4. Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan ("SIP"), State Register Document No. 4650, Legislative Review is not required

5. Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, State Register Document No. 4651, Legislative Review is required

6. Proposed Amendment of Regulation 61-47, Shellfish, Legislative Review is required

7. Proposed Amendment of Regulation 61-105, Infectious Waste Management Regulations, Legislative Review is required

8. Proposed Amendment of Regulation 61-12, Standards for Licensing Abortion Clinics, Legislative Review is required

9. Proposed Amendment of Regulation 61-68, Water Classifications and Standards, Legislative Review is required

10. Proposed Amendment of Regulation 61-94, WIC Vendors, Legislative Review is required

11. Placement of Thiafentanil into Schedule II of the SC Controlled Substances Act

12. SC Board of Health and Environmental Control 2017 meeting dates

13. Agency Affairs

Executive Session

14. **Final Review Conference -** Docket No. 16-RFR-60, End of Wave Dissipation System Study Period and Removal Notification for Isle of Palms, Harbor Island and Beachwood East

Adjournment

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
September 8, 2016

_____ ACTION/DECISION

__X__ INFORMATION

I. **TITLE:** Administrative and Consent Orders issued by Environmental Affairs.

II. **SUBJECT:** Administrative and Consent Orders issued by Environmental Quality Control (EQC) and Ocean and Coastal Resource Management (OCRM) during the period July 1, 2016 – July 31, 2016.

III. **FACTS:** For the period of July 1, 2016, through July 31, 2016, Environmental Affairs issued one hundred nine (109) Consent Orders with total assessed civil penalties in the amount of $108,675.00. Also, two (2) Administrative Orders were reported during this period with total civil penalties in the amount of $13,475.00.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Orders	Assessed Penalties
Land and Waste Management				
UST Program	2	$13,475.00	1	$1,000.00
Aboveground Tanks	0	0	0	0
Hazardous Waste	0	0	0	0
Mining	0	0	0	0
Infectious Waste	0	0	0	0
Solid Waste	0	0	0	0
SUBTOTAL	2	$13,475.00	1	$1,000.00
Water				
Recreational Water	0	0	36	$18,200.00
Drinking Water	0	0	4	$2,000.00
Water Pollution	0	0	5	21,825.00
SUBTOTAL	0	0	45	$42,025.00
Air Quality				
SUBTOTAL	0	0	1	$12,000.00
Environmental Health Services				
SUBTOTAL	0	0	61	$51,900.00
OCRM				
SUBTOTAL	0	0	1	$1,750.00
TOTAL	**2**	**$13,475.00**	**109**	**$108,675.00**

Submitted by:

Myra C. Reece
Director of Environmental Affairs

ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
September 8, 2016

BUREAU OF LAND AND WASTE MANAGEMENT

Underground Storage Tank Enforcement

1) Order Type and Number: Administrative Order 15-0260-UST
Order Date: July 28, 2016
Individual/Entity: **Vinay Kumar Patel**
Facility: Reva of Clemson
Location: 7605 Highway 76
Pendleton, South Carolina
Mailing Address: 1014 Tiger Boulevard
Clemson, South Carolina 29631
County: Anderson
*Previous Orders: None
Permit/ID Number: 10863
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 *et seq*. (2002 and Supp. 2014), R.61-92, Section 280.34(c), R.61-92, Section 280.35(e), R.61-92, Section 280.35(f), R.61-92, Section 280.35(g), R.61-92, Section 280.35(h)(2), R.61-92, Section 280.40(a), R.61-92, Section 280.41(b)(1)(ii), R.61-92, Section 280.43(d), R.61-92, Section.280.44(a), R.61-92, Section 280.93(a), R.61-92, Section 280.110(c); and Section 44-2-60(A).

Summary: Vinay Kumar Patel (Individual/Entity) owns underground storage tanks (USTs) located in Pendleton, South Carolina. On May 17, 2016, the Department sent a letter regarding the intent to prepare an Administrative Order after no contact was made following the Consent Order. The Individual/Entity has violated the South Carolina Underground Storage Tank Regulation as follows: failed to submit twelve (12) months of ATG records or tank tightness test results for all USTs; failed to submit a completed Certificate of Financial Responsibility and proof of financial responsibility mechanism; failed to submit proof of A/B Operator Logs; failed to submit a list of all Class C operators and documentation of all Class C operators' training; failed to submit current line tightness test results and line leak detector function checks on all tanks except the Kerosene tank; and, failed to pay annual underground storage tank registration fees for fiscal year 2016.

Action: The Individual/Entity is required to: submit twelve (12) months of ATG records or tank tightness test results for all USTs; submit a completed Certificate of Financial Responsibility and proof of financial responsibility mechanism, proof of A/B Operator Logs; submit a list of all Class C operators and documentation of all Class C operators' training; submit current line tightness test results and line leak detector function checks on all tanks except the Kerosene tank; pay annual tank registration fees and associated late fees for fiscal year 2016 in the amount of three

thousand, twenty-five dollars ($3,025.00); and, pay a civil penalty in the amount of ten thousand, nine hundred seventy-five dollars **($10,975.00)**.

2) Order Type and Number: Administrative Order 16-0106-UST
Order Date: July 28, 2016
Individual/Entity: **Joseph Hardee**
Facility: Hardee's Grocery
Location: 535 Main Street
Gilbert, SC
Mailing Address: 537 Main Street
Gilbert, SC 29054
County: Lexington
Previous Orders: None
Permit/ID Number: 14755
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 *et seq*. (2002 and Supp. 2014); and, R.61-92, Section 280.93(a) & Section 280.110(c) (2012).

Summary: Joseph Hardee (Individual/Entity) owns underground storage tanks (USTs) located in Gilbert, South Carolina. On January 28, 2016, the Department sent Mr. Hardee a letter notifying him that his current financial responsibility (FR) mechanism was due to expire on March 20, 2016 and a Notice of Alleged Violation was issued on April 1, 2016. The Individual/Entity has violated the South Carolina Underground Storage Tank Control Regulation as follows: failed to demonstrate FR upon expiration of the previous mechanism and failed to provide FR records to the Department upon request.

Action: The Individual/Entity is required to: submit a completed Certificate of FR and proof of FR mechanism to the Department; and, pay a civil penalty in the amount of two thousand, five hundred dollars **($2,500.00)**.

3) Order Type and Number: Consent Order 16-0069-UST
Order Date: July 12, 2016
Individual/Entity: **Reva of Spartanburg, Inc.**
Facility: Stop N Shop
Location: 398 Gossett Road
Spartanburg, SC 29307
Mailing Address: 398 Gossett Road
Spartanburg, SC 29307
County: Spartanburg
Previous Orders: None
Permit/ID Number: 08657
Violations Cited: State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act) (2002 and Supp. 2014), and South Carolina Underground Storage Tank Control Regulation R.61-92.280.20(c)(1)(ii)(A).

Summary: Reva of Spartanburg, Inc. (Individual/Entity) owns and operates underground storage tanks (USTs) located in Spartanburg, South Carolina. On April 15, 2016, the Department conducted a routine inspection of the Facility and issued a Notice of Alleged Violation because a gauging stick was being used to bypass the drop tube shut off valve of the premium unleaded UST, and the drop tube shut off valve of the kerosene UST was not installed according to manufacturer's specifications. The Individual/Entity has violated the South Carolina Underground Storage Tank Regulation as follows: failed to use overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

Action: The Individual/Entity is required to: submit proof that the kerosene drop tube shut off valve has been installed according to manufacturer's specifications and pay a civil penalty in the amount of one thousand dollars **($1,000.00)**.

BUREAU OF WATER

Recreational Water Enforcement

4)

Order Type and Number:	Consent Order 16-005-RW
Order Date:	July 5, 2016
Individual/Entity:	**Mahavir and Muni, Inc.**
Facility:	Econo Lodge
Location:	1920 West Lucas Street Florence, SC 29501
Mailing Address:	Same
County:	Florence
Previous Orders:	13-079-DW ($800.00)
Permit/ID Number:	21-088-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Mahavir and Muni, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was not tight and secure; the skimmer lids were cracked; there was no drinking water fountain; there was no foot rinse shower; the pH level was not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable range; the life ring did not have a permanently attached rope; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been paid.

5) Order Type and Number: Consent Order 16-006-RW
Order Date: July 6, 2016
Individual/Entity: **Beacon Ridge Greenville Apartments, LLC**
Facility: Beacon Ridge Apartments
Location: 5 Crystal Springs Road
Greenville, SC 29615
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit/ID Number: 23-344-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Beacon Ridge Greenville Apartments, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 26, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a bumper; a skimmer was missing a weir; a gate did not self-close and latch; the foot rinse shower was not operating properly; the life ring was deteriorated; the pool rules sign did not have all of the required rules; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**.

6) Order Type and Number: Consent Order 16-007-RW
Order Date: July 6, 2016
Individual/Entity: **Moree's Cheraw Country Club, LLC**
Facility: Cheraw Country Club
Location: Highway 52 North
Cheraw, SC 29520
Mailing Address: 1127 South Main Street
Society Hill, SC 29593
County: Chesterfield
Previous Orders: None
Permit/ID Number: 13-001-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Moree's Cheraw Country Club, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 26, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were not properly spaced; a ladder was not tight and secure; the pool furniture was not at least four feet from the edge of the pool; the deck drains were broken; there was debris in the skimmer baskets; the gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range

of water quality standards; the life ring rope was too short and was deteriorated; and, the "No Lifeguard On Duty – Swim At Your Own Risk" signs did not have the appropriate sized lettering.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid.

7)	Order Type and Number:	Consent Order 16-008-RW
	Order Date:	July 6, 2016
	Individual/Entity:	**Sejwad-Dunger, LLC**
	Facility:	Holiday Inn Express
	Location:	501 Taylor Street Columbia, SC 29201
	Mailing Address:	Same
	County:	Richland
	Previous Orders:	None
	Permit/ID Number:	40-1004B
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Sejwad-Dunger, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 25, 2016, and June 8, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a bumper; a handrail was missing a bolt cover; the drinking water fountain was not operating properly; the chlorine level was not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; the life ring rope was too short; the pool rules sign was not completely filled out; the "Shallow Water – No Diving Allowed" signs did not have the correct wording; and, the bound and numbered log book was not maintained on a daily basis, and was not maintained a minimum of three times per week by the pool operator of record.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**.

8)	Order Type and Number:	Consent Order 16-009-RW
	Order Date:	July 7, 2016
	Individual/Entity:	**1140 Ocean Boulevard Homeowners' Association**
	Facility:	1140 Ocean Boulevard Condos
	Location:	1140 Ocean Boulevard Isle of Palms, SC 29451
	Mailing Address:	Same
	County:	Charleston
	Previous Orders:	None

Permit/ID Number: 10-616-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: 1140 Ocean Boulevard Homeowners' Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain; and, on June 3, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain and for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a section of the perimeter fencing had openings greater than four inches; there was no drinking water fountain; the emergency notification device was not operational; there were chlorine sticks in the skimmer basket; and, the pool was operating prior to receiving Department approval.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of one thousand, twenty dollars **($1,020.00)**.

9) Order Type and Number: Consent Order 16-010-RW
Order Date: July 6, 2016
Individual/Entity: **Spring Valley Apartments, A Limited Partnership**
Facility: The Grove at Spring Valley
Location: 127 Sparkleberry Lane
Columbia, SC 29223
Mailing Address: Same
County: Richland
Previous Orders: 15-038-RW ($340.00)
Permit/ID Number: 40-331-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Spring Valley Apartments, A Limited Partnership (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 9, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the gate did not self-close and latch; the bathroom did not have toilet paper or soap; the pH level was not within the acceptable range of water quality standards; the emergency notification device was not operational; the facility address was not posted at the emergency notification device; there were no "No Lifeguard On Duty – Swim At Your Own Risk" signs posted; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been

paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

10) Order Type and Number: Consent Order 16-011-RW
Order Date: July 8, 2016
Individual/Entity: **Stones Throw Council of Co-Owners, Inc.**
Facility: Stones Throw
Location: 43 Folly Field Road
Hilton Head Island, SC 29928
Mailing Address: Same
County: Beaufort
Previous Orders: None
Permit/ID Number: 07-070-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Stones Throw Council of Co-Owners, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 14, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were damaged; the ladder was missing bumpers; the chlorine and pH levels were not within the acceptable range of water quality standards; the emergency notification device was not operational; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

11) Order Type and Number: Consent Order 16-012-RW
Order Date: July 8, 2016
Individual/Entity: **Queens Grant Regime, I, Inc.** Facility: Queens Grant I
Location: Palmetto Dunes
Hilton Head Island, SC 29938
Mailing Address: P.O. Box 7431
Hilton Head Island, SC 29938
County: Beaufort
Previous Orders: None
Permit/ID Number: 07-058-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Queens Grant Regime, I, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 3, 2016, the pool was inspected and a violation was issued for failure to properly operate and

maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing bumpers; a skimmer was missing a weir; the chlorine and pH levels were not within the acceptable range of water quality standards; only one "Shallow Water – No Diving Allowed" sign was posted; only one "No Lifeguard On Duty – Swim At Your Own Risk" sign was posted; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

12)	Order Type and Number:	Consent Order 16-013-RW
	Order Date:	July 13, 2016
	Individual/Entity:	**Amerihospitality, LLC**
	Facility:	Quality Inn & Suites
	Location:	121 Clear View Drive Columbia, SC 29212
	Mailing Address:	Same
	County:	Lexington
	Previous Orders:	None
	Permit/ID Number:	32-153-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Amerihospitality, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 9, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the pool walls were not clean; a depth marker tile was cracked; the water level was too low; the skimmers were missing weirs; a section of the perimeter fencing had openings greater than four inches; the step edge tile stripe was defective; the chlorine level was not within the acceptable range of water quality standards; the pool rules sign was obstructed and was not completely filled out; only one "Shallow Water – No Diving Allowed" sign was posted; no "No Lifeguard On Duty – Swim At Your Own Risk" signs were posted; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

13)	Order Type and Number:	Consent Order 16-014-RW
	Order Date:	July 12, 2016

Individual/Entity:	**Chaucer Creek Capital, LLC**
Facility:	Caledon Woods Phase 2
Location:	343 Pelham Road Greenville, SC 29615
Mailing Address:	3605 Glenwood Avenue, Suite 445 Raleigh, NC 27612
County:	Greenville
Previous Orders:	None
Permit/ID Number:	23-460-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Chaucer Creek Capital, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 27, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a bumper; a skimmer was missing a weir; the foot rinse shower was not operating properly and did not have a shower head attachment; the facility address was not posted at the emergency notification device; the pool rules sign was not posted; only one "Shallow Water – No Diving Allowed" sign was posted; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00).** The civil penalty has been paid.

14)

Order Type and Number:	Consent Order 16-015-RW
Order Date:	July 12, 2016
Individual/Entity:	**Safhi, Inc.**
Facility:	Hampton Inn Charleston/Mt. Pleasant-Patriots Point
Location:	255 Sessions Way Mount Pleasant, SC 29464
Mailing Address:	Same
County:	Charleston
Previous Orders:	None
Permit/ID Number:	10-445-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Safhi, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 10, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a section of the perimeter fencing was missing; there was no foot rinse shower; the pH level was not within the acceptable range of water quality standards; there was no shepherd's crook; there was no emergency notification device; the pool rules sign was not completely filled out; the current pool operator of record information was

not posted to the public; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action pan and corrected the deficiencies.

15)	Order Type and Number:	Consent Order 16-016-RW
	Order Date:	July 12, 2016
	Individual/Entity:	**Naniatma, LLC**
	Facility:	Days Inn
	Location:	1144 Bush River Road Columbia, SC 29210
	Mailing Address:	Same
	County:	Richland
	Previous Orders:	None
	Permit/ID Number:	40-043-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Naniatma, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 13, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was standing water on the deck; the gate did not self-close and latch; the pool equipment room was not locked; the pH level was not within the acceptable range of water quality standards; the main drain grates were not visible due to cloudy water; the shepherd's crook was not the approved length; the pool rules sign was not completely filled out; only one "No Lifeguard On Duty – Swim At Your Own Risk" sign was posted; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; call for re-inspection to verify that all of the deficiencies have been corrected; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**.

16)	Order Type and Number:	Consent Order 16-017-RW
	Order Date:	July 13, 2016
	Individual/Entity:	**South Beach Club Owners' Association, Inc.**
	Facility:	South Beach Club Villas
	Location:	251 South Sea Pines Drive Hilton Head Island, SC 29928
	Mailing Address:	Same
	County:	Beaufort
	Previous Orders:	None

Permit/ID Number: 07-219-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: South Beach Club Owners' Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 7, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the water level was too high; a skimmer was missing a weir; the gates did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the pool rules sign was not posted; the "Shallow Water – No Diving Allowed" signs did not have the correct wording; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

17) Order Type and Number: Consent Order 16-018-RW
Order Date: July 12, 2016
Individual/Entity: **Quality Investment, Inc.**
Facility: Ramada Limited
Location: 70 Contractors Way
Ridgeway, SC 29130
Mailing Address: Same
County: Fairfield
Previous Orders: None
Permit/ID Number: 20-014-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)(22)

Summary: Quality Investment, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On August 5, 2015, Department staff conducted a site visit and observed that the pool was closed to the public and was not being operated and maintained. Following the inspection, Department staff determined that the pool has been permanently closed. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: failure to fill in or remove the pool, which has been permanently closed for a period in excess of twenty-four consecutive months.

Action: The Individual/Entity is required to: submit a letter that states which option it has selected to implement to resolve the violation: fill in or remove the pool in accordance with an approved change order request form, or make all required operational and maintenance upgrades to the pool; and, pay a **stipulated penalty** in the amount of three hundred forty dollars (**$340.00**) should any requirement of the Order not be met.

18) Order Type and Number: Consent Order 16-019-RW
Order Date: July 14, 2016
Individual/Entity: **Sejwad V, LLC**
Facility: Holiday Inn Express & Suites Columbia – Fort Jackson
Location: 7329 Garners Ferry Road Columbia, SC 29209
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 40-1057B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Sejwad V, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On April 26, 2016, and May 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a bumper, the plaster on the pool floor was delaminated; the chlorine level was not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**.

19) Order Type and Number: Consent Order 16-020-RW
Order Date: July 14, 2016
Individual/Entity: **Forestbrook Apartment Complex Operating Company, LLC**
Facility: Forestbrook Apartments
Location: 2805 Shadblow Lane West Columbia, SC 29170
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit/ID Number: 32-052-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Forestbrook Apartment Complex Operating Company, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 2, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were cracked and were not in place; the pool furniture was not at least four feet from the edge of the pool; there was no foot rinse shower; the drinking water fountain was not within fifty feet of the pool; the chlorine level was not within the acceptable range of water quality standards; the main drain grates were not visible due to cloudy water; the

shepherd's crook handle was attached to a telescoping pole; only one "Shallow Water – No Diving Allowed" sign was posted; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

20)	Order Type and Number:	Consent Order 16-021-RW
	Order Date:	July 15, 2016
	Individual/Entity:	**Waterford Homeowners' Association, Inc.**
	Facility:	Waterford
	Location:	1 Leamington Way Columbia, SC 29210
	Mailing Address:	Same
	County:	Richland
	Previous Orders:	None
	Permit/ID Number:	40-378-1 & 40-379-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Waterford Homeowners' Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool and kiddie pool. On June 23, 2016, the pool and kiddie pool were inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a depth marker tile was cracked; a ladder was missing bumpers; the pool furniture was not at least four feet from the edge of the pool; the drinking water fountain was not operating properly; the step edge tile stripe was not within one inch of the step edge; the life ring was deteriorated; the pool rules sign was not completely filled out; one of the "Shallow Water – No Diving Allowed" signs did not have the correct sized lettering; both of the "No Lifeguard On Duty – Swim At Your Own Risk" signs did not have the correct sized lettering; the water level was too low; a skimmer was missing a weir; the chlorine and pH levels were not within the acceptable range of water quality standards; and, the cyanuric acid level was above the water quality standards acceptable limit.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

21)	Order Type and Number:	Consent Order 16-022-RW
	Order Date:	July 15, 2016
	Individual/Entity:	**The Woodhill Estate Homeowners Association**
	Facility:	Woodhill Condos

Location:	Sagamore Drive Columbia, SC 29209
Mailing Address:	Same
County:	Richland
Previous Orders:	None
Permit/ID Number:	40-109-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: The Woodhill Estate Homeowners Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 24, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was not tight and secure; the pool furniture was not at least four feet from the edge of the pool; the water level was too high; the gate did not self-close and latch; there was no drinking water fountain; the flow meter was not operating; the emergency notification device was not operational; the facility address was not posted at the emergency notification device; the pool rules sign did not have all of the required rules; the "Shallow Water – No Diving Allowed" signs did not have the correct sized lettering; the "No Lifeguard On Duty - Swim At Your Own Risk" signs did not have the correct sized lettering; and, the current pool operator of record information was not posted to the public.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**.

22)

Order Type and Number:	Consent Order 16-023-RW
Order Date:	July 18, 2016
Individual/Entity:	**Marsh Lake Villas Property Owners Association, Inc.**
Facility:	240 Marsh Lake Drive Georgetown, SC 29440
Mailing Address:	227 Marsh Lake Drive Georgetown, SC 29440
County:	Georgetown
Previous Orders:	None
Permit/ID Number:	22-065-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Marsh Lake Villas Property Owners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain; and, on June 17, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain, and for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a bumper; a light was coming out of its niche; the cyanuric acid level was above the water quality standards acceptable limit; the facility address was

not posted at the emergency notification device; the pool rules sign was not completely filled out; there were no "Shallow Water – No Diving Allowed" signs posted; there were no "No Lifeguard On Duty – Swim At Your Own Risk" signs posted; the pool operator of record information was not posted; the bound and numbered log book was not maintained on a daily basis; and, the pool was operating prior to receiving Department approval.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of one thousand, twenty dollars **($1,020.00)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

23)

Order Type and Number:	Consent Order 16-024-RW
Order Date:	July 19, 2016
Individual/Entity:	**Pags Camping, LLC**
Facility:	Anderson Lake Hartwell KOA
Location:	200 Wham Road Anderson, SC 29625
Mailing Address:	Same
County:	Anderson
Previous Orders:	None
Permit/ID Number:	04-024-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Pags Camping, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 21, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a handrail was not tight and secure; a ladder was not tight and secure; the gate did not self-close and latch; the pool rules sign did not have a valid time listed for the hours of operation; only one "No Lifeguard On Duty – Swim At Your Own Risk" sign was posted and the sign posted did not have the appropriate sized lettering; the bound and numbered log book was not available for review; and, the pump room was not accessible.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00).** The civil penalty has been paid.

24)

Order Type and Number:	Consent Order 16-025-RW
Order Date:	July 19, 2016
Individual/Entity:	**Ishadip, LLC**
Facility:	Days Inn Simpsonville
Location:	45 Ray East Talley Court Simpsonville, SC 29680
Mailing Address:	Same
County:	Greenville

Previous Orders: None
Permit/ID Number: 23-474-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Ishadip, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 6, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was not tight and secure and was missing a bumper; the waterline tiles were dirty; there were pine needles and leaves on the pool deck, and a rusted pipe was sticking out of the pool deck; there was debris in the skimmer baskets; the drinking water fountain was not operating properly; the chlorine and pH levels were not within the acceptable range of water quality standards; the pool rules sign was obstructed; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00).** The civil penalty has been paid.

25) Order Type and Number: Consent Order 16-026-RW
Order Date: July 19, 2016
Individual/Entity: **Shiva Lodging, LLC**
Facility: Days Inn
Location: 1007 George Mill Smith Road
Anderson, SC 29625
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit/ID Number: 04-074-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Shiva Lodging, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 26, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the waterline tiles were dirty; the pool furniture was not at least four feet from the edge of the pool; there was debris in the skimmer baskets; the drinking water fountain was not operating properly; the foot rinse shower was not operating properly; the chlorine and pH levels were not within the acceptable range of water quality standards; the main drain grates were not visible; the life ring rope was not permanently attached to the life ring; the emergency notification device was not operating properly; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; the bound and numbered log book was not maintained on a daily basis, and was not maintained a minimum of three times per week by a certified pool operator; additional items were stored in the pump room that were not pool related; and, the recirculation and filtration equipment was not operating properly.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00).** The civil penalty has been paid.

26)

Order Type and Number:	Consent Order 16-027-RW
Order Date:	July 20, 2016
Individual/Entity:	**Shivam Investments, Inc.**
Facility:	Country Inn & Suites
Location:	220 East Exchange Boulevard Columbia, SC 29290
Mailing Address:	Same
County:	Richland
Previous Orders:	None
Permit/ID Number:	40-394-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Shivam Investments, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing a non-slip tread insert; a skimmer was missing a weir; the flow meter was not operating; the chlorine and pH levels were not within the acceptable range of water quality standards; the life ring rope was not the required length; the shepherd's crook was attached to a telescoping pole; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not maintained on a daily basis, and was not maintained a minimum of three times per week by the pool operator of record.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid.

27)

Order Type and Number:	Consent Order 16-028-RW
Order Date:	July 20, 2016
Individual/Entity:	**Vallicapri, Inc.**
Facility:	Capri Apartments
Location:	4425 East Chapel Street Columbia, SC 29205
Mailing Address:	Same
County:	Richland
Previous Orders:	13-106-DW ($400.00)
Permit/ID Number:	40-066-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Vallicapri, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 25, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: two lifeline floats were waterlogged; the pool wall was dirty and there was algae present on the pool wall; there was pool cleaning equipment on the pool deck; the water level was too low; a skimmer lid was cracked; the bathroom was not accessible; the drinking water fountain and the foot rinse shower were not operating properly; the chlorine level was not within the acceptable range of water quality standards; the life ring rope was deteriorated and was not properly hung in its designated location; the emergency notification device was not operational; the facility address was not posted at the emergency notification device; the pool rules sign was not completely filled out; only one "Shallow Water – No Diving Allowed" sign was posted and the sign posted was cracked; both of the "No Lifeguard On Duty – Swim At Your Own Risk" signs were obstructed and in disrepair; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been paid.

28)	Order Type and Number:	Consent Order 16-029-RW
	Order Date:	July 20, 2016
	Individual/Entity:	**Select Hotels, Inc.**
	Facility:	Country Inn & Suites
	Location:	1739 Mandeville Road Florence, SC 29501
	Mailing Address:	Same
	County:	Florence
	Previous Orders:	None
	Permit/ID Number:	21-130-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Select Hotels, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2016, and June 22, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the gate did not self-close and latch; the bathrooms did not have toilet paper, soap, or paper towels; the chlorine and pH levels were not within the acceptable range of water quality standards; the emergency notification device was not operational; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been

paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

29) Order Type and Number: Consent Order 16-030-RW
Order Date: July 20, 2016
Individual/Entity: **Wexford Condominium Association, Inc.**
Facility: Wexford Condominiums
Location: 111 Wexford Drive
Anderson, SC 29621
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit/ID Number: 04-091-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Wexford Condominium Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 8, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was debris in the skimmer basket; the gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the pool rules sign was faded; one of the "Shallow Water – No Diving Allowed" signs did not have the correct sized lettering; both of the "No Lifeguard On Duty – Swim At Your Own Risk" signs did not have the correct sized lettering; the bound and numbered log book was not maintained on a daily basis and was not maintained a minimum of three times per week by the pool operator of record; and, the automatic controller was not operating.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**.

30) Order Type and Number: Consent Order 16-031-RW
Order Date: July 20, 2016
Individual/Entity: **The Grove at Fenwick Plantation Condominium Association, Inc.**
Facility: The Forest at Fenwick
Location: 15 Stardust Way
Johns Island, SC 29455
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit/ID Number: 10-1143B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: The Grove at Fenwick Plantation Condominium Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and

maintenance of a pool. On May 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a skimmer was missing a weir; the gate did not self-close and latch; there was only one bathroom and it was not accessible; the drinking water fountain was not operating properly; there was no foot rinse shower; there was exposed wiring in the pool pump room; the chlorine level was not within the acceptable range of water quality standards; the life ring was not properly hung in its designated location; the shepherd's crook was not properly mounted in its designated location; the emergency notification device was not operational; the facility address was not posted at the emergency notification device; the pool rules sign was not filled out; one of the "Shallow Water – No Diving Allowed" signs was obstructed and cracked; one of the "No Lifeguard On Duty – Swim At Your Own Risk" signs was obstructed and in disrepair; the current pool operator of record information was not posted to the public; the facility could not produce current valid documentation of pool operator certification; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**.

31)

Order Type and Number:	Consent Order 16-032-RW
Order Date:	July 19, 2016
Individual/Entity:	**Mount Royal & Harrington Place @ Grande Oak Plantation Homeowners Association, Inc.**
Facility:	Mount Royal & Harrington Place
Location:	536 Ivy Circle Charleston, SC 29414
Mailing Address:	449 Maple Oak Lane Charleston, SC 29414
County:	Charleston
Previous Orders:	None
Permit/ID Number:	26-1031B
Violations Cited:	S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Mount Royal & Harrington Place @ Grande Oak Plantation Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 26, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain; on June 1, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain, and for re-opening prior to receiving Department approval; and, on June 10, 2016, the pool was inspected and a violation was issued for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: several ladders were missing bumpers; skimmers were missing weirs; the gate did not self-close and latch; the shepherd's crook was not the appropriate length; the emergency notification device was not operating properly; the current pool operator of record information

was not posted to the public; depth marker tiles were cracked; the deck was uneven with sharp edges; the main drain grates were broken; the facility address was not posted at the emergency notification device; and, the pool re-opened prior to receiving Department approval.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; pay a civil penalty in the amount of eight hundred sixty dollars **($860.00)**; and, pay a stipulated penalty in the amount of five hundred dollars ($500.00) should any requirement of the Order not be met.

32)	Order Type and Number:	Consent Order 16-033-RW
	Order Date:	July 22, 2016
	Individual/Entity:	**The Members Club at Woodcreek & Wildewood**
	Facility:	Woodcreek Farms
	Location:	300 Club Ridge Drive Elgin, SC 29045
	Mailing Address:	Same
	County:	Richland
	Previous Orders:	None
	Permit/ID Number:	40-377-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: The Members Club at Woodcreek & Wildewood (Individual/Entity) owns and is responsible for the proper operation and maintenance of a kiddie pool. On June 15, 2016, the kiddie pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the current pool operator of record information was not posted to the public; the bound and numbered log book was not available for review; the gate did not self-close and latch; there was no drinking water fountain; and, the chlorine level was not within the acceptable range of water quality standards.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action pan and corrected the deficiencies.

33)	Order Type and Number:	Consent Order 16-034-RW
	Order Date:	July 22, 2016
	Individual/Entity:	**The Members Club at Woodcreek & Wildewood**
	Facility:	Wildewood Country Club
	Location:	90 Mallet Hill Road Columbia, SC 29223
	Mailing Address:	Same

County: Richland
Previous Orders: None
Permit/ID Number: 40-116-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: The Members Club at Woodcreek & Wildewood (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 17, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were deteriorated; a depth marker tile was cracked; a ladder was not tight and secure; the water level was too high; the chlorine level was not within the acceptable range of water quality standards; the main drain grates were not in place; the current pool operator of record information was not posted to the public; the bound and numbered log book was not maintained a minimum of three times per week by the pool operator of record; and, the chemical feed vessel was empty.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. On June 17, 2016, a follow-up inspection was conducted and it was determined that all of the deficiencies had been corrected.

34) Order Type and Number: Consent Order 16-035-RW
Order Date: July 22, 2016
Individual/Entity: **AMI Hospitality, Inc.**
Facility: Super 8 Motel
Location: 1832 West Lucas Street
Florence, SC 29501
Mailing Address: Same
County: Florence
Previous Orders: 14-139-DW ($800.00)
Permit/ID Number: 21-119-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: AMI Hospitality, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2016, and June 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; there was no life ring; and, the pool rules sign was not completely filled out.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of one thousand, three hundred sixty dollars **($1,360.00)**. The civil penalty has been paid.

35) Order Type and Number: Consent Order 16-036-RW

Order Date:	July 22, 2016
Individual/Entity:	**Welcome Hotels of Fort Mill, Inc.**
Facility:	Comfort Inn Carowinds
Location:	3725 Avenue of the Carolinas Fort Mill, SC 29708
Mailing Address:	Same
County:	York
Previous Orders:	14-189-DW ($800.00)
Permit/ID Number:	46-079-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Welcome Hotels of Fort Mill, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a handrail did not extend to the bottom of the pool steps; a ladder was anchored into the pool wall; a skimmer was missing a weir; the gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; the emergency notification device was not operational; the pool rules sign was not completely filled out; there were no "No Lifeguard On Duty – Swim At Your Own Risk" signs posted; the current pool operator of record information was not posted to the public; and, the log book was not properly bound or maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been paid.

36)

Order Type and Number:	Consent Order 16-037-RW
Order Date:	July 25, 2016
Individual/Entity:	**RDM Hotells, LLC**
Facility:	Howard Johnson
Location:	3430 Clemson Boulevard Anderson, SC 29621
Mailing Address:	Same
County:	Anderson
Previous Orders:	None
Permit/ID Number:	04-029-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: RDM Hotells, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 6, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was no lifeline; there was debris on the pool floor; the gate did not self-close and latch; the life ring rope was deteriorated; and, the shepherd's crook was missing a bolt.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

37) Order Type and Number: Consent Order 16-038-RW
Order Date: July 27, 2016
Individual/Entity: **Graybul The Corners, LLC**
Facility: The Corners Apartments
Location: 151 Fernwood Drive
Spartanburg, SC 29302
Mailing Address: 35 Brendan Way
Greenville, SC 29615
County: Spartanburg
Previous Orders: None
Permit/ID Number: 42-068-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Graybul The Corners, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 10, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a handrail was not tight and secure; a ladder was missing a bumper and a rung; the gate did not self-close and latch; the emergency notification device was not operational; only one "Shallow Water – No Diving Allowed" sign was posted; only one "No Lifeguard on Duty - Swim at Your Own Risk" sign was posted; the current pool operator of record information was not posted to the public; and, the bound and numbered log book was not available for review.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of three hundred forty dollars **($340.00)**. On June 13, 2016, a follow-up inspection was conducted and it was determined that all of the deficiencies had been corrected.

38) Order Type and Number: Consent Order 16-039-RW
Order Date: July 28, 2016
Individual/Entity: **Premier Hotel Group, LLC**
Facility: Baymont
Location: 1826 West Lucas Street
Florence, SC 29501
Mailing Address: 121 Dozier Boulevard
Florence, SC 29501
County: Florence
Previous Orders: None
Permit/ID Number: 21-105-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Premier Hotel Group, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 1, 2016, and June 23, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the pool furniture was not at least four feet from the pool edge; the gate did not self-close and latch; the foot rinse shower was not operating properly; there was no drinking water fountain; the chlorine and pH levels were not within the acceptable range of water quality standards; and, the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**. The civil penalty has been paid. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

39)

Order Type and Number:	Consent Order 16-040-RW
Order Date:	July 29, 2016
Individual/Entity:	**AGRE NV HH Property Owner, LLC**
Facility:	Beach House, A Holiday Inn Resort
Location:	1 South Forest Beach Drive Hilton Head Island, SC 29928
Mailing Address:	Same
County:	Beaufort
Previous Orders:	None
Permit/ID Number:	07-050-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: AGRE NV HH Property Owner, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 26, 2016, and July 1, 2016, the pool was inspected and a violation was issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were damaged; a ladder was missing bumpers; the skimmers were missing weirs; the perimeter fencing had openings greater than four inches; additional items were stored in the equipment room that were not pool related; the life ring did not have a permanently attached rope; the pool rules sign was not filled out; and, only one “Shallow Water – No Diving Allowed” sign was posted.

Action: The Individual/Entity is required to: submit a corrective action plan and schedule of implementation to address the deficiencies; and, pay a civil penalty in the amount of six hundred eighty dollars **($680.00)**.

DRINKING WATER ENFORCEMENT

40)

Order Type and Number:	Consent Order 16-038-DW

Order Date:	July 7, 2016
Individual/Entity:	**William Hutto, Individually and d.b.a. Percival Estates Mobile Home Park**
Facility:	Percival Estates Mobile Home Park
Location:	5137 Percival Road Elgin, SC 29045
Mailing Address:	7818 Jeannette Drive Columbia, SC 29223
County:	Richland
Previous Orders:	None
Permit/ID Number:	4060021
Violations Cited:	S.C. Code Ann. Regs. 61-58.6.B(5) & E(3), 61-58.5.G(2)(e), and 61-58.17.F(2)

Summary: William Hutto, Individually and d.b.a. Percival Estates Mobile Home Park (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On April 20, 2016, and May 12, 2016, violations were issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulations as follows: failure to conduct routine bacteriological monitoring; failure to collect at least five routine samples during the next month the PWS provided water to the public following a total coliform positive sample; and, failure to provide public notice for a total coliform maximum contaminant level violation.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of two thousand dollars **($2,000.00)**; and, pay a stipulated penalty in the amount of seven thousand, three hundred fifty dollars ($7,350.00) should any requirement of the Order not be met. The civil penalty has been paid.

41)

Order Type and Number:	Consent Order 16-039-DW
Order Date:	July 7, 2016
Individual/Entity:	**Town of Blacksburg**
Facility:	Town of Blacksburg
Location:	105 South Shelby Street Blacksburg, SC 29702
Mailing Address:	P.O. Box 487 Blacksburg, SC 29702
County:	Cherokee
Previous Orders:	None
Permit/ID Number:	1110002
Violations Cited:	S.C. Code Ann. Regs. 61-58.5.P(2)(b)

Summary: The Town of Blacksburg (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On May 16, 2016, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulations as follows: the PWS exceeded the maximum contaminant level (MCL) for total

trihalomethanes (TTHM).

Action: The Individual/Entity is required to: submit a corrective action plan to include proposed steps to address the MCL violation; and, pay a **stipulated penalty** in the amount of four thousand dollars **($4,000.00)** should any requirement of the Order not be met.

42)

Order Type and Number:	Consent Order 16-040-DW
Order Date:	July 12, 2016
Individual/Entity:	**Newport Veterinary Hospital, Inc.**
Facility:	Newport Veterinary Hospital
Location:	1575 Old York Road Rock Hill, SC 29732
Mailing Address:	Same
County:	York
Previous Orders:	13-092-DW ($4,000.00)
Permit/ID Number:	4670940
Violations Cited:	S.C. Code Ann. Regs. 61-58.17.K(1)

Summary: Newport Veterinary Hospital, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On June 8, 2016, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulations as follows: the PWS exceeded the maximum contaminant level (MCL) for E. coli.

Action: The Individual/Entity is required to: obtain the required construction permit to connect Newport Veterinary Hospital to the City of Rock Hill; complete the construction in accordance with the construction permit; submit a written request for the intended use of the public supply well; and, pay a **stipulated penalty** in the amount of eight thousand dollars **($8,000.00)** should any requirement of the Order not be met.

43)

Order Type and Number:	Consent Order 16-041-DW
Order Date:	July 26, 2016
Individual/Entity:	**Town of Clio**
Facility:	Town of Clio
Location:	110 North Main Street Clio, SC 29525
Mailing Address:	P.O. Box 487 Clio, SC 29525
County:	Marlboro
Previous Orders:	12-038-DW ($7,600.00)
Permit/ID Number:	3410002
Violations Cited:	S.C. Code Ann. Regs. 61-58.7

Summary: The Town of Clio (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On April 14,

2016, the PWS was inspected and rated needs improvement for failure to properly operate and maintain. The Individual/Entity has violated the State Primary Drinking Water Regulations as follows: twenty-seven (27) new fire hydrants had not yet been fire flow tested; valve operation was not being documented; a water audit had not yet been completed; and, the clearwell was leaking.

Action: The Individual/Entity is required to: correct the deficiencies; take the clearwell out of service; and, pay a **stipulated penalty** in the amount of eight thousand dollars (**$8,000.00**) should any requirement of the Order not be met.

Water Pollution Enforcement

44) Order Type and Number: Consent Order 16-018-W
Order Date: July 12, 2016
Individual/Entity: **Beaufort-Jasper Water & Sewer Authority**
Facility: Cherry Point Water Reclamation Facility
Location: 951 Jasper Station Road Ridgeland, SC 29936
Mailing Address: 6 Snake Road Okatee, SC 29909
County: Jasper
Previous Orders: None
Permit/ID Number: SC0047279
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2015); Water Pollution Control Permits, 3 S.C. Code Ann. Regs. 61-9.122.41 (a)(1) (2011)

Summary: Beaufort-Jasper Water & Sewer Authority (Individual/Entity) owns and is responsible for the proper operation and maintenance of a Water Reclamation Facility (WRF) located in Jasper County, South Carolina. On April 15, 2015, a Notice of Violation was issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation as follows: failed to comply with the effluent limits of its National Pollutant Discharge Elimination System Permit for Whole Effluent Toxicity/Chronic Toxicity (CTOX).

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Action: The Individual/Entity is required to: implement enhanced CTOX monitoring protocol to either confirm compliance or establish the need to initiate a Toxicity Identification Evaluation/Toxicity Reduction Evaluation per Environmental Protection Agency guidance; and, pay a civil penalty in the amount of four thousand, eight hundred dollars **($4,800.00)**.

45) Order Type and Number: Consent Order 16-019-W
Order Date: July 7, 2016

Individual/Entity: **Sage Automotive Interiors**
Facility: Sage Automotive WWTP
Location: 601 Brooks Street
Abbeville, SC 29620
Mailing Address: Same
County: Abbeville
Previous Orders: None
Permit/ID Number: SC0000353
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2015) and Water Pollution Control Permits, 3 S.C. Code Ann. Regs. 61-9.122.41 (a) (2011)

Summary: Sage Automotive Interiors (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment plant (WWTP) located in Abbeville County, South Carolina. On April 4, 2014, and January 15, 2015, Notices of Violation were issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with effluent discharge limits of its National Pollutant Discharge Elimination System Permit for Whole Effluent Chronic Toxicity (CTOX).

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) to address the deficiencies; implement a CTOX monitoring protocol to either confirm compliance, establish need to initiate a Toxicity Identification Evaluation/Toxicity Reduction Evaluation per Environmental Protection Agency guidance, or establish need to construct upgrades to the WWTP; and, pay a civil penalty in the amount of two thousand, three hundred eighty dollars (**$2,380.00**).

46) Order Type and Number: Consent Order 16-020-W
Order Date: July 18, 2016
Individual/Entity: **Quad State Development, Inc.**
Facility: Liberty Village Apartment Complex
Location: Tackett Way
Greenwood, SC 29649
Mailing Address: 841 Sweetwater Avenue
Florence, AL 35630
County: Greenwood
Previous Orders: None
Permit/ID Number: SCR10U694
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-90(A)(1) (Supp. 2015), Water Pollution Control Permits S.C. Code Ann. Regs. 61-9.122.41(a) and (e) (Supp. 2011).

Summary: Quad State Development, Inc. (Individual/Entity) owns and is responsible for land disturbing activity at the Liberty Village apartment complex (Site) located in Greenwood County, South Carolina. On March 17, 2015, April 28, 2015, July 14, 2015, July 29, 2015, September 2, 2015, and November 10, 2015, the Department forwarded inspection reports to the Individual/Entity, notifying the Individual/Entity of deficiencies and unsatisfactory conditions at the Site. The Individual/Entity has

violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the conditions of its National Pollutant Discharge Elimination System (NPDES) Permit; and, allowed sediment to discharge into the environment, including waters of the state, in a manner other than in compliance with its permit.

Action: The Individual/Entity is required to: correct the deficiencies and bring the Site into compliance with the conditions and requirements of the NPDES Permit and the approved Stormwater Pollution Prevention Plan (SWPPP); submit engineer certification that all stormwater and sediment control devices are installed and functioning properly; and, pay a civil penalty in the amount ten thousand, six hundred dollars (**$10,600.00**).

47) Order Type and Number: Consent Order 16-021-W
Order Date: July 18, 2016
Individual/Entity: **JACABB Utilities LLC**
Facility: Love's Travel Stop
Interstate 85 of SC/Exit 4
Location: 4238 Old Dobbins Bridge Road
Fairplay, SC 29643
Mailing Address: 210 W. North Second Street
Seneca, SC 29678
County: Anderson
Previous Orders: None
Permit/ID Number: ND0086819
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2015); Water Pollution Control Permits, 3 S.C. Code Ann. Regs. 61-9.122.41 (a) (2011)

Summary: JACABB Utilities LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment plant (WWTP) located in Fairplay, South Carolina. On February 23, 2016, a Notice of Violation was issued as a result of discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation as follows: failed to comply with the effluent limits of its Land Application Discharge Permit for Biochemical Oxygen Demand, Nitrate-Nitrogen, and Total Suspended Solids.

Action: The Individual/Entity is required to: submit a corrective action plan to address the deficiencies; and, pay a civil penalty in the amount of three thousand, forty-five dollars **($3,045.00)**.

48) Order Type and Number: Consent Order 16-022-W
Order Date: July 28, 2016
Individual/Entity: **City of Darlington**
Facility: Black Creek Wastewater Treatment Plant
Location: East of Mont Clare Rd (S-16-133)
Darlington, SC

Mailing Address: P.O. Box 57
Darlington, SC 29540
County: Darlington
Previous Orders: None
Permit/ID Number: SC0039624
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-110 (d) (Supp. 2015) and Water Pollution Control Permits, 3 S.C. Code Ann. Regs. 61-9.122.21 (d) (2011).

Summary: The City of Darlington (Individual/Entity) owns and is responsible for the proper operation and maintenance of the Black Creek wastewater treatment plant (WWTP) located in Darlington County, South Carolina. On December 1, 2015, and February 2, 2016, Department staff issued letters notifying the Individual/Entity to submit permit renewal documents as required by the existing permit. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to submit an administratively complete application for permit renewal at least one hundred eighty (180) days before the expiration date of the existing National Pollutant Discharge Elimination System (NPDES) Permit.

Action: The Individual/Entity is required to: submit an administratively complete application for renewal of its NPDES Permit; continue to operate the WWTP in accordance with the most recently issued NPDES Permit until a new permit becomes effective; and, pay a civil penalty in the amount of one thousand dollars **($1,000.00)**.

BUREAU OF AIR QUALITY

49) Order Type and Number: Consent Order 16-026-A
Order Date: July 19, 2016
Individual/Entity: **Brenntag Mid-South, Inc.**
Facility: Brenntag Mid-South, Inc.
Location: 173 Fortis Drive
Duncan, SC 29334
Mailing Address: P.O. Box 20
Henderson, KY 42419
County: Spartanburg
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: U.S. Environmental Protection Agency Regulations at 40 CFR Part 68, and 5 South Carolina Code Ann. Regs. 61-62.68, Chemical Accident Prevention Provisions

Summary: Brenntag Mid-South, Inc. (Individual/Entity) operates a chemical storage and distribution facility. On July 31, 2014, the Department conducted a comprehensive inspection. The Individual/Entity violated U.S. EPA Regulations at 40 CFR and South Carolina Air Pollution Control Regulations as follows: failed to include in its worst-case and alternative release scenarios, the specific chemical name, a

description of the selected vessel, the rationale for the selection, the quantity of the release, the release rate, or the duration of the release; failed to maintain the maximum inventory of equipment in which ammonia, chlorine, and sulfur dioxide are stored or processed; failed to address in its written operating procedures temporary and emergency operations; failed to demonstrate that the PHA had been updated and revalidated by a team meeting the requirements of Section 68.67(d) of Subpart D every five years; failed to include in its written operating procedures, the following safety and health considerations: properties of, and hazards presented by, the chemicals used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; control measures to be taken if physical contact or airborne exposure occurs; and, any special or unique hazards; failed to demonstrate that inspections had been completed according to the schedule included in its procedures for the inspection, testing, and maintenance of its emergency response equipment; and, failed to demonstrate implementation of training for the facility's emergency procedures or procedures for the use of the facility's emergency response equipment.

Action: The Individual/Entity is required to: henceforth include and maintain onsite all applicable information required for worst-case and alternative release scenarios for offsite consequence analyses performed pursuant to the 112(r) Regulations; henceforth maintain onsite the maximum inventory of equipment that stores or processes chemicals subject to the 112(r) Regulations; henceforth address all required elements in its written operating procedures, including but not limited to temporary and emergency operations, and safety and health considerations; henceforth maintain onsite statements certifying compliance with the applicable provisions of the 112(r) Regulations; henceforth document and maintain onsite records of the team and date for PHA reviews conducted pursuant to the 112(r) Regulations; henceforth maintain onsite documentation demonstrating that inspections are completed according to the schedule included in its procedures for the inspection, testing, and maintenance of its emergency response equipment subject to the 112(r) Regulations; henceforth maintain onsite training records for the facility's emergency procedures or the use of the facility's emergency response equipment subject to the 112(r) Regulations; and, pay a civil penalty in the amount of twelve thousand dollars **($12,000.00)**.

BUREAU OF ENVIRONMENTAL HEALTH SERVICES

50)	Order Type and Number:	Consent Order 2015-206-04-023
	Order Date:	July 1, 2016
	Individual/Entity:	**No. 1 Chinese Restaurant**
	Facility:	No. 1 Chinese Restaurant
	Location:	1111 East Godbold Street Marion, SC 29571
	Mailing Address:	Same
	County:	Marion
	Previous Orders:	None
	Permit Number:	33-206-00830

Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: No. 1 Chinese Restaurant (Individual/Entity) is a restaurant located in Marion, South Carolina. The Department conducted inspections on October 6, 2014, September 23, 2015, and October 2, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination; and failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

51) Order Type and Number: Consent Order 2016-206-04-002
Order Date: July 1, 2016
Individual/Entity: **Charcoal Grill**
Facility: Charcoal Grill
Location: 107 North 1st Avenue
Dillon, SC 29536
Mailing Address: Same
County: Dillon
Previous Orders: 2014-206-04-035 ($750.00)
Permit Number: 17-206-00513
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Charcoal Grill (Individual/Entity) is a restaurant located in Dillon, South Carolina. The Department conducted an inspection on January 21, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of pests.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

52) Order Type and Number: Consent Order 2015-206-03-130
Order Date: July 1, 2016
Individual/Entity: **Keg Cowboy**
Facility: Keg Cowboy
Location: 108 East Main Street
Lexington, SC 29072
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: 32-206-06298
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Keg Cowboy (Individual/Entity) is a restaurant located in Lexington, South Carolina. The Department conducted inspections on December 4, 2014, and December 3, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during mechanical sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

53) Order Type and Number: Consent Order 2015-206-03-115
Order Date: July 1, 2016
Individual/Entity: **Pi Kappa Phi**
Facility: Pi Kappa Phi
Location: 4 Fraternity Circle
Columbia, SC 29201
Mailing Address: P.O. Box 240526
Charlotte, NC 28224
County: Richland
Previous Orders: None
Permit Number: 40-206-05724
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Pi Kappa Phi (Individual/Entity) operates a food service facility in Columbia, South Carolina. The Department conducted inspections on December 9, 2014, and November 30, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during mechanical sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

54) Order Type and Number: Consent Order 2016-206-04-006
Order Date: July 1, 2016
Individual/Entity: **Valentino's Italian Restaurant**
Facility: Valentino's Italian Restaurant
Location: 323 Highway 17 North
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-11890
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Valentino's Italian Restaurant (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on August 3, 2015, and January 11, 2016. The Individual/Entity violated the South

Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

55)	Order Type and Number:	Consent Order 2016-206-04-006
	Order Date:	July 1, 2016
	Individual/Entity:	**Society Hill Sandwich Company**
	Facility:	Society Hill Sandwich Company
	Location:	767 South Main Street Society Hill, SC 29593
	Mailing Address:	P.O. Box 131 Society Hill, SC 29593
	County:	Darlington
	Previous Orders:	None
	Permit Number:	16-206-02077
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Society Hill Sandwich Company (Individual/Entity) is a restaurant located in Society Hill, South Carolina. The Department conducted inspections on December 2, 2015, and December 10, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees washed hands after points of possible contamination; and failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00).**

56)	Order Type and Number:	Consent Order 2016-206-03-006
	Order Date:	July 1, 2016
	Individual/Entity:	**Hornes General Store**
	Facility:	Hornes General Store
	Location:	377 Highway 39 Chappells, SC 29037
	Mailing Address:	Same
	County:	Newberry
	Previous Orders:	None
	Permit Number:	36-206-01299
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Hornes General Store (Individual/Entity) is a convenience store and restaurant located in Chappells, South Carolina. The Department conducted inspections on February 11, 2015, and February 2, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure poisonous or toxic materials are stored in a way to prevent contamination of

food, equipment, utensils, linens, and single-use articles; and, failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

57)	Order Type and Number:	Consent Order 2016-206-03-002
	Order Date:	July 1, 2016
	Individual/Entity:	**China Hut III**
	Facility:	China Hut III
	Location:	103 North 12th Street West Columbia, SC 29169
	Mailing Address:	101 Belle Chase Drive Lexington, SC 29072
	County:	Lexington
	Previous Orders:	None
	Permit Number:	32-206-02382
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: China Hut III (Individual/Entity) is a restaurant located in West Columbia, South Carolina. The Department conducted inspections on December 9, 2015, and December 17, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

58)	Order Type and Number:	Consent Order 2015-206-06-101
	Order Date:	July 1, 2016
	Individual/Entity:	**PF Chang's China Bistro**
	Facility:	PF Chang's China Bistro
	Location:	1190 Farrow Parkway Myrtle Beach, SC 29577
	Mailing Address:	7676 East Pinnacle Peak Road Scottsdale, AZ 85255
	County:	Horry
	Previous Orders:	None
	Permit Number:	26-206-10671
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: PF Chang's China Bistro (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on October 21, 2015, and March 15, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00).**

59)	Order Type and Number:	Consent Order 2016-206-07-009
	Order Date:	July 1, 2016
	Individual/Entity:	**Taste of Tokyo**
	Facility:	Taste of Tokyo
	Location:	3032 W. Montague Avenue, Ste. 204 North Charleston, SC 29418
	Mailing Address:	Same
	County:	Charleston
	Previous Orders:	None
	Permit Number:	10-206-09132
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Taste of Tokyo (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on March 18, 2015, March 2, 2016, and March 4, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; and failed to maintain proper sanitizer concentration during manual sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

60)	Order Type and Number:	Consent Order 2016-206-07-025
	Order Date:	July 1, 2016
	Individual/Entity:	**S & S Cafeteria**
	Facility:	S & S Cafeteria
	Location:	1104 Sam Rittenberg Boulevard Charleston, SC 29407
	Mailing Address:	P.O. Box 4688 Macon, GA 31213
	County:	Charleston
	Previous Orders:	None
	Permit Number:	10-206-00152
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: S & S Cafeteria (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on June 19, 2015, and May 11, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; failed to ensure foods

were stored in a manner to prevent cross contamination; and failed to ensure employees wash hands prior to donning gloves for food preparation.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

61)	Order Type and Number:	Consent Order 2015-206-06-104
	Order Date:	July 1, 2016
	Individual/Entity:	**Pawleys Island Inn**
	Facility:	Pawleys Island Inn
	Location:	11445 Ocean Highway Pawleys Island, SC 29585
	Mailing Address:	Same
	County:	Georgetown
	Previous Orders:	None
	Permit Number:	22-206-06199
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Pawleys Island Inn (Individual/Entity) is a hotel and restaurant located in Pawleys Island, South Carolina. The Department conducted inspections on September 22, 2015, and October 2, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during manual sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00).**

62)	Order Type and Number:	Consent Order 2015-206-06-105
	Order Date:	July 1, 2016
	Individual/Entity:	**Admiral's Room**
	Facility:	Admiral's Room
	Location:	5200 North Ocean Boulevard Myrtle Beach, SC 29577
	Mailing Address:	Same
	County:	Horry
	Previous Orders:	None
	Permit Number:	26-206-10638
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Admiral's Room (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on September 21, 2015, September 30, 2015, and March 15, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

63) Order Type and Number: Consent Order 2015-206-06-099
Order Date: July 1, 2016
Individual/Entity: **Captain's Café**
Facility: Captain's Cafe
Location: 5300 North Ocean Boulevard
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-10194
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Captain's Cafe (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on December 11, 2014, and October 15, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during manual sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

64) Order Type and Number: Consent Order 2015-206-06-086
Order Date: July 6, 2016
Individual/Entity: **Klockers**
Facility: Klockers
Location: 4807 Highway 17 Bypass
Myrtle Beach, SC 29577
Mailing Address: 1459 Avalon Drive
Surfside Beach, SC 29575
County: Horry
Previous Orders: None
Permit Number: 26-206-12465
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Klockers (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on July 27, 2015, and June 8, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

65) Order Type and Number: Consent Order 2015-206-01-048
Order Date: July 6, 2016
Individual/Entity: **Rainbow Garden**
Facility: Rainbow Garden
Location: 1085 Old Clemson Highway
Seneca, SC 29672
Mailing Address: Same
County: Oconee
Previous Orders: None
Permit Number: 37-206-00925
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Rainbow Garden (Individual/Entity) operates a restaurant located in Seneca, South Carolina. The Department conducted inspections on October 9, 2015, and April 14, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

66) Order Type and Number: Consent Order 2016-206-06-009
Order Date: July 6, 2016
Individual/Entity: **China Express**
Facility: China Express
Location: 2014 Coastal Grand Circle
Myrtle Beach, SC 29577
Mailing Address: 2014 Sugar Springs Drive
Lawrenceville, GA 30043
County: Horry
Previous Orders: None
Permit Number: 26-206-09687
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: China Express (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 15, 2015, and December 15, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

67) Order Type and Number: Consent Order 2015-206-06-100

Order Date: July 6, 2016
Individual/Entity: **Ducati's Pizzeria**
Facility: Ducati's Pizzeria
Location: 960 Cipriana Drive, Unit B-4
Myrtle Beach, SC 29572
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12598
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Ducati's Pizzeria (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on October 16, 2015, and October 22, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure written procedures for time as a public health control measure were prepared in advance, maintained in the food establishment, and made available to the Department.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

68) Order Type and Number: Consent Order 2016-206-06-006
Order Date: July 6, 2016
Individual/Entity: **Tokyo Japan**
Facility: Tokyo Japan
Location: 2014 Coastal Grand Circle FC-7
Myrtle Beach, SC 29577
Mailing Address: 2014 Sugar Springs Drive
Lawrenceville, GA 30043
County: Horry
Previous Orders: None
Permit Number: 26-206-10983
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Tokyo Japan (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 15, 2015, and December 15, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

69) Order Type and Number: Consent Order 2015-206-06-112
Order Date: July 6, 2016
Individual/Entity: **Piggly Wiggly #44 – Deli**

Facility: Piggly Wiggly #44 - Deli
Location: 1620 Highmarket Street
Georgetown, SC 29440
Mailing Address: 415 N. Salem Avenue
Sumter, SC 29150
County: Georgetown
Previous Orders: None
Permit Number: 22-206-06235
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Piggly Wiggly #44 - Deli (Individual/Entity) is a deli located in Georgetown, South Carolina. The Department conducted inspections on July 11, 2015, and November 10, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

70) Order Type and Number: Consent Order 2016-206-06-008
Order Date: July 7, 2016
Individual/Entity: **Miyabi Jr Express**
Facility: Miyabi Jr Express
Location: 2735 Beaver Run Boulevard
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12702
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Miyabi Jr Express (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on September 11, 2015 and January 13, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

71) Order Type and Number: Consent Order 2015-206-03-126
Order Date: July 7, 2016
Individual/Entity: **Cook Out**
Facility: Cook Out
Location: 515 West Main Street
Lexington, SC 29072

Mailing Address: 125 North Ridgewood Avenue
Daytona Beach, FL 32114
County: Lexington
Previous Orders: None
Permit Number: 32-206-06183
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cook Out (Individual/Entity) is a restaurant located in Lexington, South Carolina. The Department conducted inspections on October 13, 2015, and November 25, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

72) Order Type and Number: Consent Order 2016-206-06-006
Order Date: July 13, 2016
Individual/Entity: **Golden Egg**
Facility: Golden Egg
Location: 415 Highway 17 North
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-00682
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Golden Egg (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on July 9, 2015, and January 8, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

73) Order Type and Number: Consent Order 2016-206-08-018
Order Date: July 13, 2016
Individual/Entity: **Sodexo/Whale Branch Middle School**
Facility: Sodexo/Whale Branch Middle School
Location: 2009 Trask Parkway
Seabrook, SC 29940
Mailing Address: 2900 Mink Point Boulevard
Beaufort, SC 29901

County: Beaufort
Previous Orders: None
Permit Number: 07-206-01983
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sodexo/Whale Branch Middle School (Individual/Entity) operates a cafeteria located in Seabrook, South Carolina. The Department conducted inspections on November 2, 2015, and April 19, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during manual sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and pay a civil penalty in the amount of eight hundred dollars **($800.00).**

74) Order Type and Number: Consent Order 2016-206-07-026
Order Date: July 13, 2016
Individual/Entity: **Hampton Inn West Ashley**
Facility: Hampton Inn West Ashley
Location: 678 Citadel Haven Drive
Charleston, SC 29414
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-05128
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hampton Inn West Ashley (Individual/Entity) is a hotel and restaurant located in Charleston, South Carolina. The Department conducted inspections on May 6, 2016, and May 9, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of five hundred fifty dollars **($550.00).**

75) Order Type and Number: Consent Order 2015-206-06-109
Order Date: July 13, 2016
Individual/Entity: **Marina Inn at Grande Dunes**
Facility: Marina Inn at Grande Dunes
Location: 8121 Amalfi Place
Myrtle Beach, SC 29572
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-11954

Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Marina Inn at Grande Dunes (Individual/Entity) is a hotel and restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on January 29, 2015, and November 9, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that a Hazard Analysis Critical Control Point (HACCP) plan was implemented prior to reduced oxygen packaging of time/temperature control for safety food.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

76) Order Type and Number: Consent Order 2015-206-01-050
Order Date: July 13, 2016
Individual/Entity: **Outback Steakhouse**
Facility: Outback Steakhouse
Location: 110 Interstate Boulevard
Anderson, SC 29621
Mailing Address: 2202 North West Shore Boulevard
Tampa, FL 33607
County: Anderson
Previous Orders: None
Permit Number: 04-206-02311
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Outback Steakhouse (Individual/Entity) operates a restaurant located in Anderson, South Carolina. The Department conducted inspections on December 11, 2015, and December 16, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00).**

77) Order Type and Number: Consent Order 2016-206-06-017
Order Date: July 15, 2016
Individual/Entity: **Big Apple Bagels**
Facility: Big Apple Bagels
Location: 116B Highway 17 North
Surfside Beach, SC 29575
Mailing Address: P.O. Box 15067
Surfside Beach, SC 29587
County: Horry
Previous Orders: None
Permit Number: 26-206-09385
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Big Apple Bagels (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on August 26, 2015, and February 5, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees wash hands prior to donning gloves for food preparation.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

78)

Order Type and Number:	Consent Order 2016-206-01-006
Order Date:	July 15, 2016
Individual/Entity:	**Hibachi Grill and Supreme Buffet**
Facility:	Hibachi Grill and Supreme Buffet
Location:	3517 Clemson Boulevard Anderson, SC 29621
Mailing Address:	Same
County:	Anderson
Previous Orders:	None
Permit Number:	04-206-04040
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Hibachi Grill and Supreme Buffet (Individual/Entity) operates a restaurant located in Anderson, South Carolina. The Department conducted inspections on December 23, 2015, and February 18, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination; and failed to maintain the manufacturers' required final rinse temperature during mechanical sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

79)

Order Type and Number:	Consent Order 2016-206-06-033
Order Date:	July 15, 2016
Individual/Entity:	**Ultimate California Pizza**
Facility:	Ultimate California Pizza
Location:	2500 North Kings Highway Myrtle Beach, SC 29577
Mailing Address:	2504 South Kings Highway Myrtle Beach, SC 29577
County:	Horry
Previous Orders:	None
Permit Number:	26-206-08830
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Ultimate California Pizza (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on February 19, 2016, and February 25, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; and, failed to install adequate backflow prevention protection at a water source connection.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

80)

Order Type and Number:	Consent Order 2016-206-07-014
Order Date:	July 15, 2016
Individual/Entity:	**Dig In the Park**
Facility:	Dig In the Park
Location:	1049 East Montague Avenue North Charleston, SC 29405
Mailing Address:	Same
County:	Charleston
Previous Orders:	None
Permit Number:	10-206-07690
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Dig In the Park (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on March 4, 2015, and February 25, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

81)

Order Type and Number:	Consent Order 2016-206-04-009
Order Date:	July 15, 2016
Individual/Entity:	**McCormick's Grocery & Grill**
Facility:	McCormick's Grocery & Grill
Location:	3094 Kirkley Road Jefferson, SC 29718
Mailing Address:	Same
County:	Chesterfield
Previous Orders:	None
Permit Number:	13-206-01229
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: McCormick's Grocery & Grill (Individual/Entity) is a convenience store and restaurant located in Jefferson, South Carolina. The Department conducted inspections on December 15, 2014, and November 30, 2015. The Individual/Entity

violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

82)

Order Type and Number:	Consent Order 04-206-04149
Order Date:	July 20, 2016
Individual/Entity:	**Happy Donkey Mexican Grill**
Facility:	Happy Donkey Mexican Grill
Location:	3230 South Main Street Anderson, SC 29624
Mailing Address:	Same
County:	Anderson
Previous Orders:	None
Permit Number:	04-206-04149
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Happy Donkey Mexican Grill (Individual/Entity) is a restaurant located in Anderson, South Carolina. The Department conducted inspections on December 8, 2015, and December 18, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of pests.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

83)

Order Type and Number:	Consent Order 2016-206-06-016
Order Date:	July 20, 2016
Individual/Entity:	**Myrtle Beach Elks Lodge #1771**
Facility:	Myrtle Beach Elks Lodge #1771
Location:	607 27th Avenue North Myrtle Beach, SC 29577
Mailing Address:	Same
County:	Horry
Previous Orders:	None
Permit Number:	26-206-07538
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Myrtle Beach Elks Lodge (Individual/Entity) operates a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on March 25, 2015, and January 22, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

84) Order Type and Number: Consent Order 2016-206-03-008
Order Date: July 21, 2016
Individual/Entity: **McDonalds**
Facility: McDonalds
Location: 1024 Elmwood Avenue
Columbia, SC 29224
Mailing Address: Same
County: Richland
Previous Orders: None
Permit Number: 40-206-06975
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: McDonalds (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on January 25, 2016, and February 3, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded after a maximum of four (4) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

85) Order Type and Number: Consent Order 2016-206-03-008
Order Date: July 21, 2016
Individual/Entity: **McDonalds**
Facility: McDonalds
Location: 399 Killian Road
Columbia, SC 29203
Mailing Address: 107 Burmaster Drive
Columbia, SC 29229
County: Richland
Previous Orders: None
Permit Number: 40-206-07367
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: McDonalds (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on January 12, 2015, and January 4, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded after a maximum of four (4) hours.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

86) Order Type and Number: Consent Order 2016-206-06-027
Order Date: July 22, 2016
Individual/Entity: **Flying Fish**
Facility: Flying Fish
Location: 4744 Highway 17 South
North Myrtle Beach, SC 29582
Mailing Address: 1177 Southgate Drive
Charleston, SC 29407
County: Horry
Previous Orders: None
Permit Number: 26-206-11422
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Flying Fish (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on July 20, 2015, and June 17, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees washed hands after points of possible contamination and failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

87) Order Type and Number: Consent Order 2016-206-03-012
Order Date: July 26, 2016
Individual/Entity: **Korner Kupboard II**
Facility: Korner Kupboard II
Location: 503 North Matson Street
Kershaw, SC 29067
Mailing Address: Same
County: Kershaw
Previous Orders: None
Permit Number: 26-206-00067
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Korner Kupboard II (Individual/Entity) is a restaurant located in Kershaw, South Carolina. The Department conducted inspections on February 20, 2015, and February 18, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

88) Order Type and Number: Consent Order 2016-206-01-007
Order Date: July 26, 2016
Individual/Entity: **China**
Facility: China
Location: 4369 Highway 24
Anderson, SC 29625
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit Number: 04-206-03590
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: China (Individual/Entity) is a restaurant located in Anderson, South Carolina. The Department conducted inspections on July 8, 2015, and January 7, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees washed hands after points of possible contamination; and failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

89) Order Type and Number: Consent Order 2016-206-04-008
Order Date: July 26, 2016
Individual/Entity: **Short Trip #6**
Facility: Short Trip #6
Location: 4369 Highway 24
Anderson, SC 29625
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit Number: 04-206-03590
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Short Trip #6 (Individual/Entity) is a convenience store located in Anderson, South Carolina. The Department conducted inspections on October 28, 2015, and December 14, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination; failed to ensure materials used in the construction of utensils and food-contact surfaces of equipment do not allow the migration of deleterious substances or impart colors, odors, or taste to food under normal use conditions.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

90)	Order Type and Number:	Consent Order 2016-206-08-010
	Order Date:	July 26, 2016
	Individual/Entity:	**Big Joes BBQ**
	Facility:	Big Joes BBQ
	Location:	780 D Parris Island Gateway Beaufort, SC 29906
	Mailing Address:	1001 Cypress Street Beaufort, SC 29906
	County:	Beaufort
	Previous Orders:	None
	Permit Number:	07-206-02335
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Big Joes BBQ (Individual/Entity) is a restaurant located in Beaufort, South Carolina. The Department conducted inspections on July 27, 2015, August 6, 2015, and April 12, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure food contact surfaces and utensils are kept clean to sight and touch.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

91)	Order Type and Number:	Consent Order 2015-206-06-097
	Order Date:	July 26, 2016
	Individual/Entity:	**New Ho Wah Restaurant Inc.**
	Facility:	New Ho Wah Restaurant Inc.
	Location:	409 South Kings Highway Myrtle Beach, SC 29577
	Mailing Address:	Same
	County:	Horry
	Previous Orders:	None
	Permit Number:	26-206-08598
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: New Ho Wah Restaurant Inc. (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on October 2, 2015, and April 1, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

92) Order Type and Number: Consent Order 2015-206-06-110
Order Date: July 26, 2016
Individual/Entity: **Firehouse Subs #35**
Facility: Firehouse Subs #35
Location: 1211 38th Avenue North
Myrtle Beach, SC 29577
Mailing Address: P.O. Box 50820
Myrtle Beach, SC 29579
County: Horry
Previous Orders: None
Permit Number: 26-206-08788
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Firehouse Subs #35 (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on December 9, 2014, and November 12, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

93) Order Type and Number: Consent Order 2015-206-06-103
Order Date: July 26, 2016
Individual/Entity: **China Buffet**
Facility: China Buffet
Location: 1239 38th Avenue North
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: 2013-206-06-028 ($1,500.00);
2014-206-06-055 ($1,200.00)
Permit Number: 26-206-11899
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: China Buffet (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on December 30, 2015, and January 7, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs.

61-25; and, pay a civil penalty in the amount of one thousand, six hundred dollars **($1,600.00)**.

94) Order Type and Number: Consent Order 2015-206-07-084
Order Date: July 26, 2016
Individual/Entity: **Bi-Lo #5228 Deli/Bakery**
Facility: Bi-Lo #5228 Deli/Bakery
Location: 975 Bacons Bridge Road
Summerville, SC 29485
Mailing Address: Same
County: Dorchester
Previous Orders: None
Permit Number: 18-206-00413
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Bi-Lo #5228 Deli/Bakery (Individual/Entity) is a deli and bakery located in Summerville, South Carolina. The Department conducted inspections on August 20, 2014, and August 10, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

95) Order Type and Number: Consent Order 2016-206-04-010
Order Date: July 26, 2016
Individual/Entity: **Fast Lane**
Facility: Fast Lane
Location: 500 Highway 1 South
Cheraw, SC 29520
Mailing Address: Same
County: Chesterfield
Previous Orders: None
Permit Number: 13-206-01475
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Fast Lane (Individual/Entity) is a restaurant located in Chesterfield, South Carolina. The Department conducted inspections on December 8, 2014, and November 23, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

96) Order Type and Number: Consent Order 2016-206-06-028
Order Date: July 26, 2016
Individual/Entity: **90 Express**
Facility: 90 Express
Location: 676 Highway 90
Conway, SC 29526
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-09949
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: 90 Express (Individual/Entity) is a convenience store located in Conway, South Carolina. The Department conducted inspections on June 2, 2015 and February 11, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

97) Order Type and Number: Consent Order 2016-206-08-004
Order Date: July 26, 2016
Individual/Entity: **Squat N Gobble**
Facility: Squat N Gobble
Location: 1231 May River Road
Bluffton, SC 29910
Mailing Address: Same
County: Beaufort
Previous Orders: None
Permit Number: 07-206-09600
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Squat N Gobble (Individual/Entity) is a restaurant located in Bluffton, South Carolina. The Department conducted inspections on April 1, 2016, and April 11, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

98) Order Type and Number: Consent Order 2016-206-06-005
Order Date: July 26, 2016
Individual/Entity: **Michael's Pizza Pasta & Grill**
Facility: Michael's Pizza Pasta & Grill

Location: 1701 North Kings Highway
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: 2015-206-06-001 ($1,750.00)
Permit Number: 26-206-07160
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Michael's Pizza Pasta & Grill (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on December 7, 2015, and April 26, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

99) Order Type and Number: Consent Order 2016-206-06-026
Order Date: July 26, 2016
Individual/Entity: **Eggs Up Grill – Garden City**
Facility: Eggs Up Grill – Garden City
Location: 2520 Highway 17 South, Unit 1
Murrells Inlet, SC 29576
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12244
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Eggs Up Grill – Garden City (Individual/Entity) is a restaurant located in Murrells Inlet, South Carolina. The Department conducted inspections on October 16, 2015, and February 9, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

100) Order Type and Number: Consent Order 2016-206-06-022
Order Date: July 26, 2016
Individual/Entity: **Plantation Pancake House**
Facility: Plantation Pancake House
Location: 2001 Highway 17
North Myrtle Beach, SC 29582
Mailing Address: Same

County: Horry
Previous Orders: None
Permit Number: 26-206-10279
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Plantation Pancake House (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on June 26, 2015, and January 27, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

101) Order Type and Number: Consent Order 2016-206-06-032
Order Date: July 26, 2016
Individual/Entity: **Stir Fry 88**
Facility: Stir Fry 88
Location: 10177 North Kings Highway
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-10338
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Stir Fry 88 (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 15, 2014, February 23, 2015, and February 11, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain access to handwashing sinks during food service operations.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

102) Order Type and Number: Consent Order 2016-206-06-019
Order Date: July 26, 2016
Individual/Entity: **CO Sushi LLC**
Facility: CO Sushi LLC
Location: 3098 Deville Street
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12624

Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: CO Sushi LLC (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on August 18, 2015, and February 9, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper sanitizer concentration during manual sanitization of equipment and utensils.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

103) Order Type and Number: Consent Order 2016-206-04-013
Order Date: July 26, 2016
Individual/Entity: **New China Buffet**
Facility: New China Buffet
Location: 714 South Irby Street
Florence, SC 29501
Mailing Address: Same
County: Florence
Previous Orders: None
Permit Number: 21-206-02107
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: New China Buffet (Individual/Entity) is a restaurant located in Florence, South Carolina. The Department conducted inspections on October 22, 2015, and January 1, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods and failed to ensure foods were stored in a manner to prevent cross contamination.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

104) Order Type and Number: Consent Order 2016-206-07-027
Order Date: July 26, 2016
Individual/Entity: **Applebee's #701**
Facility: Applebee's #701
Location: 7818 Rivers Avenue
North Charleston, SC 29406
Mailing Address: 170 Wind Chime Court
Raleigh, NC 27615
County: Charleston
Previous Orders: 2015-206-07-074 ($800.00)
Permit Number: 10-206-07978
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Applebee's #701 (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on January 11, 2016, and April 19, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00)**.

105)

Order Type and Number:	Consent Order 2016-206-06-018
Order Date:	July 26, 2016
Individual/Entity:	**Ocean Dragon**
Facility:	Ocean Dragon
Location:	1725 Highmarket Street Georgetown, SC 29440
Mailing Address:	Same
County:	Georgetown
Previous Orders:	None
Permit Number:	22-206-05831
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Ocean Dragon (Individual/Entity) is a restaurant located in Georgetown, South Carolina. The Department conducted inspections on January 14, 2016, and January 25, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods and failed to ensure cooked foods were rapidly cooled.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of five hundred fifty dollars **($550.00)**.

106)

Order Type and Number:	Consent Order 2016-206-09720
Order Date:	July 27, 2016
Individual/Entity:	**Senor Frogs**
Facility:	Senor Frogs
Location:	1304 Celebrity Circle, Suite R8 Myrtle Beach, SC 29577
Mailing Address:	Same
County:	Horry
Previous Orders:	None
Permit Number:	26-206-09720
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Senor Frogs (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on May 26, 2015,

January 28, 2016, and February 8, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods; and failed to install adequate backflow prevention protection at a water source connection.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of one thousand, two hundred dollars **($1,200.00).**

107)

Order Type and Number:	Consent Order 2016-206-04-014
Order Date:	July 28, 2016
Individual/Entity:	**Halls Restaurant and Catering**
Facility:	Halls Restaurant and Catering
Location:	812 Highway 1 South Lugoff, SC 29078
Mailing Address:	Same
County:	Kershaw
Previous Orders:	None
Permit Number:	28-206-00580
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Halls Restaurant and Catering (Individual/Entity) is a restaurant located in Lugoff, South Carolina. The Department conducted inspections on May 4, 2015, and May 3, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and pay a civil penalty in the amount of eight hundred dollars **($800.00).**

108)

Order Type and Number:	Consent Order 2015-208-06-001
Order Date:	July 29, 2016
Individual/Entity:	**Kingstree Elementary School**
Facility:	Kingstree Elementary School
Location:	500 Academy Street Kingstree, SC 29556
Mailing Address:	Same
County:	Williamsburg
Previous Orders:	None
Permit Number:	45-208-00246
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Kingstree Elementary School (Individual/Entity) operates a cafeteria located in Kingstree, South Carolina. The Department conducted inspections on September 29, 2015, and April 21, 2016. The Individual/Entity violated

the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

109)

Order Type and Number:	Consent Order 2015-206-03-117
Order Date:	July 29, 2016
Individual/Entity:	**Nick's Gyros & Subs III**
Facility:	Nick's Gyros & Subs III
Location:	7355 Two Notch Road Columbia, SC 29223
Mailing Address:	Same
County:	Richland
Previous Orders:	None
Permit Number:	40-206-06320
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Nick's Gyro's & Subs III (Individual/Entity) operates a restaurant located in Columbia, South Carolina. The Department conducted inspections on September 3, 2015, and September 4, 2015. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper holding temperatures of time/temperature control for safety foods.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

110)

Order Type and Number:	Consent Order 2016-206-07-012
Order Date:	July 27, 2016
Individual/Entity:	**Jackie's Place**
Facility:	Jackie's Place
Location:	4306 Rivers Avenue North Charleston, SC 29405
Mailing Address:	Same
County:	Charleston
Previous Orders:	None
Permit Number:	10-206-09286
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Jackie's Place (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on March 22, 2016, and March 31, 2016. The Individual/Entity violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure cooked foods were rapidly cooled.

Action: The Individual/Entity is required to: operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25; and, pay a civil penalty in the amount of eight hundred dollars **($800.00)**.

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

111) Order Type and Number: Consent Order 15B-007P
Order Date: July 22, 2016
Individual/Entity: **ROBMICCHHI, LLC**
Hilton Head Builders, Inc.
Location: 21 Singleton Beach Place
Hilton Head Island, SC
Mailing Address: P.O. Box 1290
Bluffton, SC 29910
County: Beaufort
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: S.C. Code Ann. §48-39-130(A) and 23A S.C. Code Ann. Regs. 30-2(B); S.C. Code Ann. §48-39-290(B)(1)(a) and 23A S.C. Code Ann. Regs. 30-13(B)

Summary: ROBMICCHHI, LLC (Individual/Entity) is the owner of certain property abutting the beach/dune system and tidelands critical area and Hilton Head Builders, Inc. (Individual/Entity) is a contractor. An inspection at the site was conducted on October 15, 2015, and a Notice of Violation/Admission Letter was issued on February 16, 2016. The Individuals/Entities have violated the Coastal Zone Management Act and Critical Area Permitting Regulations by constructing a habitable structure in the beach/dune system critical area and a bridge in the tidelands critical area without authorization from the Department.

Action: The Individuals/Entities have agreed to: pay a civil penalty in the amount of one thousand, seven hundred and fifty dollars **($1,750.00)** and to never again engage in any activity that requires a Department permit or begin construction of any structure seaward of the setback line before receiving authorization from the Department.

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* Unless otherwise specified, "Previous Orders" as listed in this report include orders issued by Environmental Affairs Programs within the last five (5) years.

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

September 8, 2016

( ) ACTION/DECISION

(X) INFORMATION

I. **TITLE:** Health Regulation Administrative and Consent Orders.

II. **SUBJECT:** Health Regulation Administrative Orders, Consent Orders, and Emergency Suspension Orders for the period of July 1, 2016, through July 31, 2016.

III. **FACTS:** For the period of July 1, 2016, through July 31, 2016, Health Regulation reports one (1) Emergency Suspension Order, one (1) Administrative Order, and three (3) Consent Orders with a total of four thousand dollars ($4,000) in assessed monetary penalties.

Health Regulation Bureau	Health Care Facility, Provider or Equipment	Administrative Orders	Consent Orders	Emergency Suspension Orders	Assessed Penalties
Health Facilities Licensing	Body Piercing Facilities	0	1	0	$0
	Tattoo Facilities	0	1	0	$4,000
EMS & Trauma	EMTs	1	1	0	$0
	Paramedics	0	0	1	$0
TOTAL		**1**	**3**	**1**	**$4,000**

Approved By:

Shelly Bezanson Kelly
Director of Health Regulation

HEALTH REGULATION ENFORCEMENT REPORT
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

September 8, 2016

Bureau of Health Facilities Licensing

Facility Type	Total # of Licensed Facilities in South Carolina
Body Piercing Facilities	34

1. Stuck on You Body Piercing – Dillon, SC

Investigation: On August 13, 2015, the Department visited Stuck on You Body Piercing (Stuck on You) to conduct a general inspection and cited the facility for violations of Regulation 61-109, *Standards for Permitting Body Piercing Facilities.*

Violations: After the August 13, 2015, inspection, the Department cited Stuck on You for failing to document staff's annual hepatitis B surface antigen test, failing to properly package and sterilize by autoclave body piercing equipment, and failing to have a room for disinfecting and sterilizing equipment. Because of the facility's failure to submit a plan of correction for these violations, the Department also issued a citation-by-mail to the facility on November 3, 2015.

Enforcement Action: By Consent Order executed on July 13, 2016, the Department placed Stuck on You on probation until the conditions of the Consent Order are satisifed. First, Stuck on You agreed to initiate action to correct the violations that prompted this enforcement action and ensure that regulatory violations are not repeated. Second, Stuck on You agreed to attend a compliance assistance meeting with the Department, which took place on August 18, 2016. Finally, as a term of the Consent Order, DHEC is conducting a follow-up inspection at Stuck on You and will lift probation if no regulatory violations are found.

Prior Sanctions: None.

Facility Type	Total # of Stations	Total # of Licensed Facilities in South Carolina
Tattoo Facilities	456	115

2. Ink Wave Tattoos – Myrtle Beach, SC

Investigation: On February 10, 2016, the Department visited Ink Wave Tattoos (Ink Wave) to conduct a general inspection and cited the facility for violations of Regulation 61-111, *Standards for Licensing Tattoo Facilities.*

Violations: After the February 10, 2016, inspection, the Department cited Ink Wave for failing to review policies and procedures, failing to have an artist's signature on a client consent form, failing to specify the procedure and site of a tattoo in writing, failing to protect client records, failing to provide clients with written aftercare instructions, failing to have accurate contact information for the Department on the client consent form, failing to properly maintain lighting in the facility, and failing to have eyewash solution in the first aid kit. Because of the facility's failure to submit a plan of correction for these violations, the Department also issued citations-by-mail to the facility on March 23, 2016, and April 12, 2016.

Enforcement Action: The parties met on June 7, 2016, and agreed to resolve this matter with a consent order. The parties executed the Consent Order on July 22, 2016, and Ink Wave agreed to an assessed monetary penalty of $4,000. As a term of the Consent Order, Ink Wave has paid $1,000 of the total assessed monetary penalty and the remaining $3,000 is stayed upon six months of substantial compliance with the regulation and Consent Order. Finally, Ink Wave agreed to take steps to correct the violations that initiated this enforcement action.

Prior Sanctions: None.

Bureau of EMS & Trauma

EMS Provider Type	Total # of Providers in South Carolina
EMT	5,570
EMT – Intermediate	458
Advanced EMT	317
Paramedic	3,677
Ambulance Services Provider	260
First Responder Services Provider	2

3. Reginald D. Washington (EMT)

Investigation: In November 2015, Pee Dee Regional EMS (Pee Dee) provided the Department with an investigation file on Mr. Washington, which contained information on his potential misconduct. Mr. Washington had been enrolled in a paramedic class at Pee Dee, which serves as a regional training facility for EMS and related courses in Florence. Pee Dee discovered that Mr. Washington submitted falsified run reports for his field internship as part of his paramedic class.

Violations: The Department found that Mr. Washington committed misconduct as defined by the EMS Act and Regulation 61-7, *Emergency Medical Services*, by practicing deceitful and dishonest acts regarding completion of his paramedic certification class and by submitting falsified field internship reports required for a paramedic certification class.

Enforcement Action: The parties met and attempted to resolve this matter by consent order but were initially unsuccessful. The Department issued an administrative order to Mr. Washington on June 20, 2016, which suspended his EMT certification for one year. However, the parties were later able to agree

to terms of a consent order. According to the Consent Order executed on July 19, 2016, the parties agreed that the Department will hold Mr. Washington's one-year suspension in abeyance pending compliance with terms of this Consent Order. In addition, Mr. Washington agreed to re-perform all requirements for the field internship portion of his paramedic course to work towards eligibility to pursue the National Registry of Emergency Medical Technicians (NREMT) paramedic certificate. If Mr. Washington commits misconduct in the next year, the Department may immediately impose all or part of one-year suspension, and initiate other enforcement action, including revocation of his EMT certificate.

Prior Sanctions: None.

4. Joseph Timothy Rouse (Paramedic)

Investigation: On June 23, 2016, the Department was notified of Mr. Rouse's arrest in Lancaster County. Upon notification, the Department initiated an investigation into the matter. The Department discovered that Mr. Rouse had been arrested on May 26, 2016, and charged with criminal sexual conduct with a minor in the third degree.

Violations: The charge against Mr. Rouse, specifically criminal sexual conduct with a minor in the third degree, is a felony and a crime involving moral turpitude or gross immorality. Mr. Rouse's alleged conduct is in violation of the EMS Act and Regulation 61-7, *Emergency Medical Services.* The Department found that Mr. Rouse's arrest demonstrated a capacity for inappropriate and criminal behavior towards individuals placed within his trust. The Department further determined that a clear and present danger would exist to the public health, safety, and welfare if Mr. Rouse's paramedic certificate was not immediately suspended pending further investigation.

Enforcement Action: Mr. Rouse's paramedic certificate was immediately suspended on an emergency basis pursuant to the Emergency Suspension Order executed July 8, 2016. The Department will continue to monitor the investigation.

Prior Sanctions: None.

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
September 8, 2016

(X) ACTION
( ) INFORMATION

I. TITLE: Public Hearing Before the Board and Consideration for Final Approval of Proposed Amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards,* and the South Carolina Air Quality Implementation Plan ("SIP"). South Carolina *State Register* Document No. 4650. Legislative Review Is Not Required.

II. SUBJECT: Request for Finding of Need and Reasonableness Pursuant to 1976 Code Section 1-23-111.

III. FACTS:

1. Pursuant to the South Carolina Pollution Control Act, 1976 Code Section 48-1-10 et seq., along with 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.

2. The United States Environmental Protection Agency ("EPA") promulgates amendments to the Code of Federal Regulations ("CFR") throughout each calendar year. Recent federal amendments to 40 CFR Parts 51, 52, 60, 61, 63 and 70 include clarification, guidance and technical revisions to SIP requirements promulgated pursuant to 42 U.S.C. Sections 7410 & 7413, New Source Performance Standards ("NSPS") mandated by 42 U.S.C. Section 7411, and federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Source Categories mandated by 42 U.S.C Section 7412.

3. The Department proposed to amend Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*; Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*; and the SIP, to adopt the federal amendments to these standards put forth from January 1, 2015, through December 31, 2015.

4. The Department proposed to amend Regulation 61-62.1, Section II, *Permit Requirements*; Regulation 61-62.5, Standard No.1, *Emissions From Fuel Burning Operations*; and Regulation 61-62.5, Standard No. 4, *Emissions from Process Industries*, to address periods of excess emissions during startup, shutdown, or malfunction ("SSM") events as required by the EPA in response to a national petition for rulemaking and to address a finding of substantial inadequacy (referred to as a "SIP call") (80 FR 33840, June 12, 2015).

5. The Department is also making other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

6. South Carolina industries are already subject to the standards to be adopted as a matter of federal law. Thus, there will be no increased cost to the State or its political subdivisions resulting from codification of

these amendments to federal law. The state of South Carolina is already reaping the environmental benefits of these amendments.

7. In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement is required.

8. A Notice of Drafting was published in the *State Register* on February 26, 2016, to initiate the statutory process to amend Regulation 61-62. The Notice of Drafting was also published on the Department's Regulatory Information website in the *DHEC Regulation Development Update*. The Notice of Drafting was also sent via Department list serve to interested stakeholders on February 26, 2016. A copy of the Notice of Drafting is submitted as Attachment D. The public comment period ended on March 28, 2016. Comments were received and considered. These comments were the result of previous discussions between the Department and external stakeholders in reference to the EPA's rulemaking concerning SSM.

9. The proposed regulation has been internally reviewed by all appropriate staff.

10. A Summary of Revisions and the Text of Amendments are submitted as Attachments B and C, respectively.

11. On June 9, 2016, the Board granted initial approval to publish the proposed amendments in the *State Register* and to provide opportunity for public comment. A Notice of Proposed Regulation was published in the *State Register* on June 24, 2016 (Document No. 4650). Notice was also published in the *DHEC Regulation Development Update*. The public comment period ended on July 27, 2016. The Department received no comments from the public and a 'no comment' letter from the EPA. The letter from the EPA is submitted as Attachment G. The Department has not proposed any additional revisions or changes to the text of the regulations as proposed. A copy of the Notice of Proposed Regulation is submitted as Attachment E.

12. A copy of the applicable law is submitted as Attachment F.

IV. ANALYSIS:

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the SIP are necessary to ensure compliance and maintain conformity with federal requirements and standards. See the Statement of Need and Reasonableness submitted as Attachment A.

V. RECOMMENDATION:

The Bureau respectfully requests the Board find for the need and reasonableness of the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina Air Quality Implementation Plan ("SIP"), and grant approval to publish a Notice of Final Regulation in the *State Register* on September 23, 2016, effective upon publication.

Rhonda B. Thompson, P.E.
Bureau Chief
Bureau of Air Quality

Myra C. Reece
Deputy Director
Environmental Quality Control

Attachments

A. Statement of Need and Reasonableness
B. Summary of Revisions
C. Text of Amendments
D. *State Register* Notice of Drafting Published February 26, 2016
E. Excerpt From *State Register* Notice of Proposed Regulation Published June 24, 2016
F. Copy of Applicable Law
G. EPA Comment Letter

ATTACHMENT A
Statement of Need and Reasonableness
Regulation 61-62, *Air Pollution Control Regulations and Standards*
September 8, 2016

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Amendment of Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina Air Quality Implementation Plan ("SIP").

Purpose:
(1) The United States Environmental Protection Agency ("EPA") promulgated amendments to national air quality standards in 2015. The recent federal amendments include clarification, guidance and technical revisions to SIP requirements promulgated pursuant to 42 U.S.C. Sections 7410 & 7413, New Source Performance Standards ("NSPS") mandated by 42 U.S.C. Section 7411, and federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Source Categories mandated by 42 U.S.C. Section 7412.

(2) The Department is amending Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*; Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*; and the SIP, to codify federal amendments to these standards promulgated from January 1, 2015, through December 31, 2015.

(3) The Department is amending Regulation 61-62.1, Section II, *Permit Requirements*; Regulation 61-62.5, Standard No.1, *Emissions from Fuel Burning Operations*; and Regulation 61-62.5, Standard No. 4, *Emissions from Process Industries*, to address periods of excess emissions during startup, shutdown, or malfunction ("SSM") events as required by the EPA in response to a national petition for rulemaking and to address a finding of substantial inadequacy (referred to as a "SIP call") (80 FR 33840, June 12, 2015).

(4) The Department is also making other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

Legal Authority:
Pursuant to the South Carolina Pollution Control Act, 1976 Code Section 48-1-10 et seq., along with 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.

Plan for Implementation:
The proposed amendments will take effect upon approval by the Board of Health and Environmental Control and publication in the *State Register*. These requirements are in place at the federal level and are currently being implemented. The proposed amendments will be implemented in South Carolina by providing the regulated community with copies of the regulation, publishing associated information on

our website at http://www.scdhec.gov/Agency/RegulationsAndUpdates/, sending an email to stakeholders, and communicating with affected facilities during the permitting process.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The EPA promulgates amendments to 40 CFR Parts 51, 52, 60, 61, 63, and 70 throughout each calendar year. Federal amendments in 2015 included new and revised NSPS rules, NESHAPs, and NESHAPs for Source Categories. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure compliance with both state and federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the State or its political subdivisions resulting from these proposed revisions. The standards to be adopted are already in effect and applicable to the regulated community as a matter of federal law, thus the regulated community has already incurred the cost of these regulations. The proposed amendments incorporate the revisions to the EPA regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The proposed amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

The State's authority to implement federal requirements, which are beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

ATTACHMENT B
Summary of Proposed Revisions to
Regulation 61-62*, Air Pollution Control Regulations and Standards*
September 8, 2016

SECTION CITATION/EXPLANATION OF CHANGE:

Regulation 61-62.1*, Section II, Permit Requirements*

Regulation 61-62.1, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Paragraph L.2. is amended to delete the entire sentence, in order to address the SSM SIP Call rule.

Regulation 61-62.1, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Paragraph L.3. is amended to delete the phrase "The affirmative defense of"; and amended to delete the lowercase "a" in an; and replace with upper case "A". Paragraph L.3. is also amended to delete the phrase "shall be demonstrated" and replace with "may be documented" to read, "An emergency may be documented through properly signed, contemporaneous operating logs and other relevant evidence that verify:", in order to address the SSM SIP Call rule.

Regulation 61-62.1, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Paragraph L.4. is amended to delete the entire sentence in order to address the SSM SIP Call rule.

Regulation 61-62.1, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Paragraphs L.3 through L.5 are renumbered in alpha-numeric order to account for the deleted paragraphs L.2 and L.4 and to ensure clarity and consistency.

Regulation 61-62.1*, Section III, Emissions Inventory and Emissions Statements*

Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*:
Paragraph B.1.a. is amended to delete the word "potential" to ensure clarity within this section of the regulation. Table 1 is revised to lower the point source threshold for lead (Pb) emissions to 0.5 tons per year (tpy) of actual emissions. The purpose of this change is to match requirements of the Pb Ambient Air Monitoring Requirements rule (75 FR 81126; December 27, 2010), which required monitoring agencies to install and operate source-oriented ambient monitors near Pb sources emitting 0.5 tpy or more by December 27, 2011 (80 FR 8787; February 19, 2015). An additional column and a footnote are added to the table to clarify that the Pb threshold is based on actual emissions rather than potential emissions. Table 2 is amended to delete the phrase "(tpy potential to emit[1])" and replace with "(tons per year)" for clarity and consistency within this portion of the regulation.

Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*:
Paragraph B.1.b. is amended to delete the word "potential" to ensure clarity within this section of the regulation.

Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*:
Paragraph B.1.c. is amended to delete the word "potential" to ensure clarity within this section of the regulation. Table 2 is revised to lower the point source threshold for lead (Pb) emissions to 0.5 tons per year (tpy) of actual emissions by deleting "5" in the table and replacing with "0.5". The purpose of this change is to match requirements of the Pb Ambient Air Monitoring Requirements rule (75 FR 81126; December 27, 2010), which required monitoring agencies to install and operate source-oriented ambient monitors near Pb sources emitting 0.5 tpy or more by December 27, 2011 (80 FR 8787; February 19, 2015). An additional column and a footnote are added to the table to clarify that the Pb threshold is based

on actual emissions rather than potential emissions. The footnotes are reordered for clarity and consistency. Table 2 is amended to delete the phrase "(tpy potential to emit[1])" and replace with "(tons per year)" for clarity and consistency within this portion of the regulation.

Regulation 61-62.1, Section III, *Emissions Inventory and Emissions Statements*:
Paragraph B.2.e.x. is amended to delete the comma after the phrase "(December 17, 2008)" for correct punctuation and consistency within the regulation.

Regulation 61-62.5, *Standard No. 1, Emissions from Fuel Burning Operations*

Regulation 61-62.5, *Standard No. 1, Emissions from Fuel Burning Operations:*
Section I, Paragraph C. is amended to delete the entire first sentence in order to address the SSM SIP Call rule.

Regulation 61-62.5, *Standard No. 1, Emissions from Fuel Burning Operations:*
Section IV, Paragraph A.1. is amended to add a hyphen between the words "Fuel" and "Fired" for consistency within the regulation.

Regulation 61-62.5, *Standard No. 1, Emissions from Fuel Burning Operations:*
Section IV, Paragraph D.1. is amended to add a hyphen between the words "fuel" and "fired" for consistency within the regulation.

Regulation 61-62.5, *Standard No. 2, Ambient Air Quality Standards*

Table is revised for consistency with federal National Ambient Air Quality Standard by removing the information for the 1997 Ozone Standard and adding the information for the 2015 Ozone standard.

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction*

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction:*
Section IV, Paragraph A.2.g.(i) is amended to replace "analysis" with "analyses" for consistency within the regulation; and add a period to the end of the last sentence for correct punctuation.

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction:*
Section V, Paragraph J. is amended to replace the words "on site" with the word "on-site" for consistency within the regulation.

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction:*
Section VI, Paragraph D.3. is amended to add an apostrophe to the word "sources" for correct punctuation and consistency with the rest of the regulation

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction:*
Section IX, Paragraph A. is amended to replace the words "on site" with the word "on-site" for consistency within the regulation.

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction:*
Section IX, Paragraph C. is amended to replace the word "operating" with the word "operator" for consistency within this section of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI)*

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (c)(7), is amended to delete the semicolon and add a period for correct punctuation and consistency with the rest of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (c)(8), is amended to delete the semicolon and add a period for correct punctuation and consistency with the rest of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (c)(9), is amended to delete the semicolon and the word "and" and add a period for correct punctuation and consistency with the rest of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (e), is amended to delete the word "semiannually" and replace with the word "semi-annually" for correct punctuation and consistency with the rest of the regulation.

Regulation 61-62.5, *Standard No.3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (h)(2), is amended to delete the word "semiannually" and replace with the word "semi-annually" for correct punctuation and consistency with the rest of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section VIII, Paragraph (k), is amended to delete the word "District" and replace with the word "Regional" for consistency within this section of the regulation.

Regulation 61-62.5, *Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI):*
Section IX, Paragraph (h)(9), is amended to delete the words "Record keeping" and replace with the word "recordkeeping" for consistency with the rest of the regulation.

Regulation 61-62.5*, Standard No. 4, Emissions from Process Industries*

Regulation 61-62.5, *Standard No. 4, Emissions from Process Industries*:
Section XI, paragraph D.4 is amended to delete the entire section in order to address the SSM SIP Call rule.

Regulation 61-62.60*, South Carolina Designated Facility Plan and New Source Performance Standards*

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Subpart A, Table, is amended to incorporate federal revisions at 80 FR 13671, March 16, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Subpart F, Table, is amended to incorporate federal revisions at 80 FR 44771, July 27, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Subpart J, Table, is amended to incorporate federal revisions at 80 FR 75178, December 1, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*:
Subpart Ja, Table, is amended to incorporate federal revisions at 80 FR 75178, December 1, 2015, by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart T, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart U, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart V, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart W, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart X, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart AAA, Table, is amended to incorporate federal revisions at 80 FR 13671, March 16, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart OOOO, Table, is amended to incorporate federal revisions at 80 FR 48262, August 12, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart PPPP is added in alpha-numeric order for consistency with federal regulations.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart QQQQ, Table, is added to incorporate a newly promulgated federal rule at 80 FR 13671, March 16, 2015 by reference.

Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*: Subpart TTTT, Table, is added to incorporate a newly promulgated federal rule at 80 FR 64509, October 23, 2015 by reference.

Regulation 61-62.63, ***National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories***

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart A is amended to delete the word "Title" for consistency. Subpart A, Table, is amended to incorporate by reference federal revisions at 80 FR 37365, June 30, 2015; 80 FR 50385, August 19, 2015, 80 FR 56699, September 18, 2015; 80 FR 62389, October 15, 2015; 80 FR 65469, October 26, 2015; 80 FR 75178, December 1, 2015; and 80 FR 75817, December 4, 2015.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart N, Table, is amended to incorporate federal revisions at 80 FR 22116, April 21, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart Y, Table, is amended to incorporate federal revisions at 80 FR 75178, December 1, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart AA, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart BB, Table, is amended to incorporate federal revisions at 80 FR 50385, August 19, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart CC, Table, is amended to incorporate federal revisions at 80 FR 75178, December 1, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart DD, Table, is amended to incorporate federal revisions at 80 FR 14247, March 18, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart GG, Table, is amended to incorporate federal revisions at 80 FR 76151, December 7, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart LL, Table, is amended to incorporate federal revisions at 80 FR 62389, October 15, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart NN is amended to add a table to incorporate federal revisions at 80 FR 45279, July 29, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart DDD, Table, is amended to incorporate federal revisions at 80 FR 45279, July 29, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart LLL, Table, is amended to incorporate federal revisions at 80 FR 44771, July 27, 2015; and 80 FR 54728, September 11, 2015, by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart NNN, Table, is amended to incorporate federal revisions at 80 FR 45279, July 29, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart RRR, Table, is amended to incorporate federal revisions at 80 FR 56699, September 18, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart UUU, Table, is amended to incorporate federal revisions at 80 FR 75178, December 1, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart XXX, Table, is amended to incorporate federal revisions at 80 FR 37365, June 30, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart DDDDD, is amended to add Table and to incorporate federal revisions at 69 FR 55218, September 13, 2004 to 80 FR 72789, November 20, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart JJJJJ, is amended to add Table and to incorporate federal revisions at 68 FR 26690, May 16, 2003 to 80 FR 65469, October 26, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart KKKKK, is amended to add Table and to incorporate federal revisions at 68 FR 26690, May 16, 2003 to 80 FR 65469, October 26, 2015; and 80 FR 75817, December 4, 2015, by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart UUUUU, Table, is amended to incorporate federal revisions at 80 FR 15510, March 24, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart YYYYY, Table, is amended to incorporate federal revisions at 80 FR 36247, June 24, 2015 by reference.

Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*: Subpart DDDDDD, Table, is amended to incorporate federal revisions at 80 FR 5938, February 4, 2015 by reference.

ATTACHMENT C
Text of Proposed Amendment to
Regulation 61-62, Air Pollution Control Regulations and Standards
September 8, 2016

Text:

Regulation 61-62.1, *Section II, Permit Requirements*

Regulation 61-62.1.II.L.2. shall be deleted as follows:

~~2. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions in Section II.L.3 below are met.~~

Regulation 61-62.1.II.L.3. shall be revised as follows:

~~3~~2. ~~The affirmative defense of a~~An emergency ~~shall be demonstrated~~may be documented through properly signed, contemporaneous operating logs and other relevant evidence that verify:

Regulation 61-62.1.II.L.4. shall be deleted as follows:

~~4. In any enforcement action, the owner or operator seeking to establish the occurrence of an emergency has the burden of proof.~~

Regulation 61-62.1.II.L.5. shall be revised as follows:

~~5~~3. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Regulation 61-62.1, *Section III, Emissions Inventory and Emissions Statements*

Regulation 61-62.1.III.B.1.a. shall be revised as follows:

a. Type A Sources are Title V Sources with ~~potential~~ annual emissions greater than or equal to any of the emission thresholds listed for Type A Sources in Table 1 below. Type A Sources must submit an emissions inventory every year.

Table 1 - Minimum Point Source Reporting Thresholds by Pollutant ~~(tpy potential to emit[1])~~(tons per year)		
Pollutants	**Type A Sources: Annual Cycle**	**Potential[1] or Actual[2]**
SO_X	≥2500	Potential
VOC	≥250	Potential
NO_X	≥2500	Potential
CO	≥2500	Potential
Pb	~~—~~≥0.50[2]	Actual

PM_{10}	≥250	Potential
$PM_{2.5}$	≥250	Potential
NH_3	≥250	Potential

[1] Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

[2] The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

Regulation 61-62.1.III.B.1.b. shall be revised as follows:

b. All other Title V Sources with ~~potential~~ annual emissions less than the emission thresholds listed for Type A Sources in Table 1 above must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

Regulation 61-62.1.III.B.1.c. shall be revised as follows:

c. Nonattainment area (NAA) Sources are sources located in a NAA with ~~potential~~ annual emissions during any year of the three (3) year cycle greater than or equal to any of the emission thresholds listed for NAA Sources in Table 2 below. These sources that are not also Type A Sources must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

Table 2 - Minimum Point Source Reporting Thresholds by Pollutant ~~(tpy potential to emit[1])~~(tons per year)		
Pollutant	**NAA~~[23]~~ Sources: Three-year Cycle**	**Potential[1] or Actual[2]**
SO_X	≥100	Potential
VOC	≥100 (moderate O_3 NAA)	Potential
	≥50 (serious O_3 NAA)	
	≥25 (severe O_3 NAA)	
	≥10 (extreme O_3 NAA)	
NO_X	≥100 (all O_3 NAA)	Potential
CO	≥100 (all O_3 NAA)	Potential
	≥100 (all CO NAA)	
Pb	≥~~5~~0.50	Actual
PM_{10}	≥100 (moderate PM_{10} NAA)	Potential
	≥70 (serious PM_{10} NAA)	
$PM_{2.5}$	≥100	Potential
NH_3	≥100	Potential

[1] Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

[2] The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

~~2~~[3] Special point source reporting thresholds apply for certain pollutants by type of NAA. The pollutants by nonattainment area are:
Ozone: VOC, NO_X, and CO;
Carbon Monoxide: CO; and
Particulate matter less than 10 microns: PM_{10}.

Regulation 61-62.1.III.B.2.e.x. shall be revised as follows:

x. Any desired information listed in 40 CFR 51 Subpart A (December 17, 2008)~~,~~ that is requested by the Department;

Regulation 61-62.5*, Standard No. 1, Emissions from Fuel Burning Operations*

Regulation 61-62.5, Standard No. 1, Section I.C. shall be revised as follows:

~~The opacity standards set forth above do not apply during startup or shutdown.~~ Owners and operators shall, to the extent practicable, maintain and operate any source including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. In addition, the owner or operator of fuel burning sources except natural gas and propane fired units, shall maintain a log of the time, magnitude, duration, and any other pertinent information to determine periods of startup and shutdown and make available to the Department upon request.

Regulation 61-62.5, Standard No. 1, Section IV.A.1. shall be revised as follows:

1. Fossil Fuel-Fired Boilers

Regulation 61-62.5.IV.D.1. shall be revised as follows:

1. The continuous opacity monitoring system(s) required by Section IV.A.1 (for fossil fuel-fired steam generators) shall conform with the performance specifications set forth in 40 CFR 60, Appendix B, Performance Specification 1, as revised July 1, 1986, which is incorporated by reference as a part of this standard except that where the term "Administrator" is used the term "Department" shall be substituted. In addition, the opacity monitoring system(s) shall complete a minimum of one (1) cycle of operation for each successive 10-second period, be installed such that representative measurements of opacity from the affected steam generator are obtained, and have an instrument span of approximately eighty (80) percent opacity.

Regulation 61-62.5*, Standard No. 2, Ambient Air Quality Standards*

Regulation 61-62.5, *Standard No. 2, Ambient Air Quality Standards*, shall be revised as follows:

Pollutant	Reference	Measuring Interval	Standard Level			
			mg/m^3	**$\mu g/m^3$**	**ppm**	**ppb**
Sulfur Dioxide	40 CFR 50.4 40 CFR 50.5	3 hour (secondary)	-	1300	0.5	-
	40 CFR 50.17	1- hour (primary)	-	-	-	75
PM_{10}	40 CFR 50.6	24 hour	-	150	-	-
$PM_{2.5}$	40 CFR 50.13 40 CFR 50.18	24 hour (primary)	-	35	-	-
		Annual (primary)	-	12	-	-
		24 hour (secondary)	-	35		
		Annual (secondary)	-	15		
Carbon Monoxide	40 CFR 50.8	1 hour (no secondary)	40	-	35	-
		8 hour (no secondary)	10	-	9	-
Ozone	~~40 CFR 50.10~~	~~8 hour (1997)~~	~~-~~	~~-~~	~~0.08~~	~~-~~
	40 CFR 50.15	8 hour (2008)	-	-	0.075	-
	40 CFR 50.19	8 hour (2015)	-	-	0.070	-
Nitrogen Dioxide	40 CFR 50.11	Annual	-	100	0.053	53
		1-hour				100
Lead	40 CFR 50.16	Rolling 3-month Average	-	0.15	-	-

Regulation 61-62.5, *Standard No. 3, Waste Combustion and Reduction*

Regulation 61-62.5, Standard No. 3, Section IV.A.2.g.(i) shall be revised as follows:

(i) All commercial incinerators must notify the Department in writing of their intent to operate, including information regarding the fuel and waste (amount, type(s), specification/~~analysis~~analyses) and method of operation within 60 days of June 25, 1999, unless otherwise stated in this standard. The Department will notify the source within 30 days of receipt of this information if a formal permit application is needed.

Regulation 61-62.5, Standard No. 3, Section V.J. shall be revised as follows:

J. All information used to determine compliance with this section (that is, MSDS, waste manifests, waste analyses) must be kept ~~on site~~on-site for a period of five years and made available to the Department upon request.

Regulation 61-62.5, Standard No. 3, Section VI.D.3. shall be revised as follows:

3. For those sources not required to have a continuous emission monitor for the specified pollutant, a detailed report shall be submitted to the Department within 30 days following any exceedance of limits specified in the source's permit and/or this standard unless otherwise approved in a Department approved malfunction plan. The report shall include at a minimum all of the elements listed in Regulation 61-62.1, Section II.J.1.c.

Regulation 61-62.5, Standard No. 3, Section IX.A. shall be revised as follows:

A. Prior to the startup for new facilities and within one year of May 25, 1990, for existing facilities, all incinerator operators shall be trained by the equipment manufacturers' representatives and/or other Department approved qualified individuals and/or organizations as to proper operating practices and procedures. The content of the training program shall be submitted to the Department for approval. The applicant shall submit certification verifying the satisfactory completion of a training program prior to issuance of the operating permit. The applicant shall not operate the incinerator without an operator ~~on site~~on-site who has satisfactorily completed the training program.

Regulation 61-62.5, Standard No. 3, Section IX.C. shall be revised as follows:

C. An incinerator ~~operating~~operator training program should include but not be limited to:

Regulation 61-62.5*, Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI)*

Regulation 61-62.5, Standard No. 3.1, Section VIII(c)(7) shall be revised as follows:

(7) Records showing the names of HMIWI operators who have completed review of the information in Section IX(h) as required by Section IX(g) of this standard, including the date of the initial review and all subsequent annual reviews~~;~~.

Regulation 61-62.5, Standard No. 3.1, Section VIII(c)(8) shall be revised as follows:

(8) Records showing the names of the HMIWI operators who have completed the operator training requirements, including documentation of training and the dates of the training~~;~~.

Regulation 61-62.5, Standard No. 3.1, Section VIII(c)(9) shall be revised as follows:

(9) Records showing the names of the HMIWI operators who have met the criteria for qualification under Section IX of this standard and the dates of their qualification~~; and~~.

Regulation 61-62.5, Standard No. 3.1, Section VIII(e) shall be revised as follows:

(e) The owner or operator of an affected facility shall ensure that an annual report is submitted one year following the submission of the information in paragraph (d) of this section. Subsequent reports shall be submitted no more than 12 months following the previous report (once the unit is subject to permitting requirements under Title V of the Clean Air Act, the owner or operator of an affected facility must submit

these reports ~~semiannually~~semi-annually). The annual report shall include the information specified in paragraphs (e)(1) through (e)(8) of this section. All reports shall be signed by the facilities manager.

Regulation 61-62.5, Standard No. 3.1, Section VIII(h)(2) shall be revised as follows:

(2) Submit an annual report containing information recorded under paragraph (h)(1) of this section no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report (once the unit is subject to permitting requirements under Title V of the Act, the owner or operator must submit these reports ~~semiannually~~semi-annually). The report shall be signed by the facilities manager.

Regulation 61-62.5, Standard No. 3.1, Section VIII(k) shall be revised as follows:

(k) The owner or operator of an affected facility shall ensure the appropriate ~~District~~Regional Environmental Quality Control Office is notified by telephone immediately following any failure of process equipment, failure of any air pollution control equipment, failure of any monitoring equipment, or a process operational error which results in an increase in emissions above any allowable emission rate. In addition, the owner or operator of an affected facility shall ensure that the Department is notified in writing of the problem and measures taken to correct the problem as expeditiously as possible in accordance with South Carolina Air Pollution Control Regulation 61-62.1, Section II.J.1.c.

Regulation 61-62.5, Standard No. 3.1, Section IX(h)(9) shall be revised as follows:

(9) Reporting and ~~Record keeping~~recordkeeping procedures; and

Regulation 61-62.5*, Standard No. 4, Emissions from Process Industries*

Regulation 61-62.5, Standard No. 4, Section XI.D.4 shall be deleted in its entirety as follows:

~~4. The Department will consider periods of excess emissions reported under paragraph D.3 above to be indicative of a violation if:~~

~~a. The number of 12-hour exceedances from recovery furnaces is greater than one (1) percent of the total number of contiguous 12-hour periods in a quarter (excluding periods of startup, shutdown, or malfunction and periods when the recovery furnace is not operating).~~

~~b. The number of 12-hour exceedances from lime kilns is greater than two (2) percent of the total number of contiguous 12-hour periods in a quarter (excluding periods of startup, shutdown, or malfunction and periods when the lime kiln is not operating).~~

~~c. The number of 12-hour exceedances from incinerators is greater than two (2) percent of the total number of contiguous periods in a quarter (excluding periods of startup, shutdown, or malfunction and periods when the incinerator is not operating).~~

~~d. The Department determines that the affected equipment, including air pollution control equipment, is not maintained and operated in a manner which is consistent with good air pollution control practice for minimizing emissions during periods of excess emissions.~~

Regulation 61-62.60*, South Carolina Designated Facility Plan and New Source Performance Standards*

Regulation 61-62.60, Subpart A, shall be revised as follows:

Subpart A - "General Provisions"

The provisions of 40 Code of Federal Regulations (CFR) Part 60 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 38	October 15, 1973	[38 FR 28565]
Revision	Vol. 39	March 8, 1974	[39 FR 9314]
Revision	Vol. 39	November 12, 1974	[39 FR 39873]
Revision	Vol. 40	April 25, 1975	[40 FR 18169]
Revision	Vol. 40	October 6, 1975	[40 FR 46254]
Revision	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 40	December 16, 1975	[40 FR 58418]
Revision	Vol. 40	December 22, 1975	[40 FR 59205]
Revision	Vol. 41	August 20, 1976	[41 FR 35185]
Revision	Vol. 42	July 19, 1977	[42 FR 37000]
Revision	Vol. 42	July 27, 1977	[42 FR 38178]
Revision	Vol. 42	November 1, 1977	[42 FR 57126]
Revision	Vol. 43	March 3, 1978	[43 FR 8800]
Revision	Vol. 43	August 3, 1978	[43 FR 34347]
Revision	Vol. 44	June 11, 1979	[44 FR 33612]
Revision	Vol. 44	September 25, 1979	[44 FR 55173]
Revision	Vol. 45	January 23, 1980	[45 FR 5617]
Revision	Vol. 45	April 4, 1980	[45 FR 23379]
Revision	Vol. 45	December 24, 1980	[45 FR 85415]
Revision	Vol. 47	January 8, 1982	[47 FR 951]
Revision	Vol. 47	July 23, 1982	[47 FR 31876]
Revision	Vol. 48	March 30, 1983	[48 FR 13326]
Revision	Vol. 48	May 25, 1983	[48 FR 23610]
Revision	Vol. 48	July 20, 1983	[48 FR 32986]
Revision	Vol. 48	October 18, 1983	[48 FR 48335]
Revision	Vol. 50	December 27, 1985	[50 FR 53113]
Revision	Vol. 51	January 15, 1986	[51 FR 1790]
Revision	Vol. 51	January 21, 1986	[51 FR 2701]
Revision	Vol. 51	November 25, 1986	[51 FR 42796]
Revision	Vol. 52	March 26, 1987	[52 FR 9781, 9782]
Revision	Vol. 52	April 8, 1987	[52 FR 11428]
Revision	Vol. 52	May 11, 1987	[52 FR 17555]
Revision	Vol. 52	June 4, 1987	[52 FR 21007]
Revision	Vol. 54	February 14, 1989	[54 FR 6662]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]

40 CFR Part 60 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 55	December 13, 1990	[55 FR 51382]
Revision	Vol. 57	July 21, 1992	[57 FR 32338, 32339]
Revision	Vol. 59	March 16, 1994	[59 FR 12427, 12428]
Revision	Vol. 59	September 15, 1994	[59 FR 47265]
Revision	Vol. 61	March 12, 1996	[61 FR 9919]
Revision	Vol. 62	February 24, 1997	[62 FR 8328]
Revision	Vol. 62	September 15, 1997	[62 FR 48348]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 64	February 12, 1999	[64 FR 7463]
Revision	Vol. 65	August 10, 2000	[65 FR 48914]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 6, 2000	[65 FR 76350, 76378]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	February 6, 2001	[66 FR 9034]
Revision	Vol. 67	June 28, 2002	[67 FR 43550]
Revision	Vol. 68	April 14, 2003	[68 FR 17990]
Revision	Vol. 68	May 28, 2003	[68 FR 31611]
Revision	Vol. 69	July 8, 2004	[69 FR 41346]
Revision	Vol. 70	December 16, 2005	[70 FR 74870]
Revision	Vol. 71	June 1, 2006	[71 FR 31100]
Revision	Vol. 71	July 6, 2006	[71 FR 38482]
Revision	Vol. 72	May 16, 2007	[72 FR 27437]
Revision	Vol. 72	June 13, 2007	[72 FR 32710]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	April 3, 2008	[73 FR 18162]
Revision	Vol. 73	May 6, 2008	[73 FR 24870]
Revision	Vol. 73	May 27, 2008	[73 FR 30308]
Revision	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	January 28, 2009	[74 FR 5072]
Revision	Vol. 74	October 6, 2009	[74 FR 51368]
Revision	Vol. 74	October 8, 2009	[74 FR 51950]
Revision	Vol. 74	December 17, 2009	[74 FR 66921]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 76	March 21, 2011	[76 FR 15372]
Revision	Vol. 76	March 21, 2011	[76 FR 15704]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	August 14, 2012	[77 FR 48433]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]

40 CFR Part 60 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 79	April 4, 2014	[79 FR 18952]
Revision	Vol. 80	March 16, 2015	[80 FR 13671]

Regulation 61-62.60, Subpart F, shall be revised as follows:

Subpart F - "Standards of Performance for Portland Cement Plants"

The provisions of 40 CFR Part 60 Subpart F, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart F			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 39	June 14, 1974	[39 FR 20793]
Revision	Vol. 39	November 12, 1974	[39 FR 39874]
Revision	Vol. 40	October 6, 1975	[40 FR 46258]
Revision	Vol. 42	July 25, 1977	[42 FR 37936]
Revision	Vol. 53	December 14, 1988	[53 FR 50363]
Revision	Vol. 54	February 14, 1989	[54 FR 6666]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 78	February 12, 2013	[78 FR 10006]
Revision	Vol. 80	July 27, 2015	[80 FR 44771]

Regulation 61-62.60, Subpart J, shall be revised as follows:

Subpart J - "Standards of Performance for Petroleum Refineries"

The provisions of 40 CFR Part 60 Subpart J, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart J			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 39	March 8, 1974	[39 FR 9315]
Revision	Vol. 40	October 6, 1975	[40 FR 46259]
Revision	Vol. 42	June 24, 1977	[42 FR 32427]
Revision	Vol. 42	August 4, 1977	[42 FR 39389]
Revision	Vol. 43	March 15, 1978	[43 FR 10868]
Revision	Vol. 44	March 12, 1979	[44 FR 13481]
Revision	Vol. 44	October 25, 1979	[44 FR 61543]
Revision	Vol. 45	December 1, 1980	[45 FR 79453]
Revision	Vol. 48	May 25, 1983	[48 FR 23611]
Revision	Vol. 50	August 5, 1985	[50 FR 31701]

40 CFR Part 60 Subpart J			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 51	November 26, 1986	[51 FR 42842]
Revision	Vol. 52	June 1, 1987	[52 FR 20392]
Revision	Vol. 53	October 21, 1988	[53 FR 41333]
Revision	Vol. 54	August 17, 1989	[54 FR 34026]
Revision	Vol. 55	October 2, 1990	[55 FR 40175]
Revision	Vol. 56	February 4, 1991	[56 FR 4176]
Revision	Vol. 64	February 12, 1999	[64 FR 7465]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 71	September 21, 2006	[71 FR 55119]
Revision	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 76	February 25, 2011	[76 FR 10524]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]

Regulation 61-62.60, Subpart Ja, shall be revised as follows:

Subpart Ja - "Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007"

The provisions of 40 CFR Part 60 Subpart Ja, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart Ja			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 73	July 28, 2008	[73 FR 43626]
Revision	Vol. 73	September 26, 2008	[73 FR 55751]
Revision	Vol. 73	December 22, 2008	[73 FR 78546]
Revision	Vol. 73	December 22, 2008	[73 FR 78549]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 78	December 19, 2013	[78 FR 76753]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]

Regulation 61-62.60, Subpart T, shall be revised as follows:

Subpart T - "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants"

The provisions of 40 CFR Part 60 Subpart T, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart T			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 40	August 6, 1975	[40 FR 33154]
Revision	Vol. 42	July 25, 1977	[42 FR 37937]
Revision	Vol. 48	February 17, 1983	[48 FR 7129]
Revision	Vol. 54	February 14, 1989	[54 FR 6669]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.60, Subpart U, shall be revised as follows:

Subpart U - "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants"

The provisions of 40 CFR Part 60 Subpart U, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart U			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 40	August 6, 1975	[40 FR 33155]
Revision	Vol. 42	July 25, 1977	[42 FR 37937]
Revision	Vol. 48	February 17, 1983	[48 FR 7129]
Revision	Vol. 54	February 14, 1989	[54 FR 6670]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.60, Subpart V, shall be revised as follows:

Subpart V - "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants"

The provisions of 40 CFR Part 60 Subpart V, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart V			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 40	August 6, 1975	[40 FR 33155]
Revision	Vol. 42	July 25, 1977	[42 FR 37937]
Revision	Vol. 48	February 17, 1983	[48 FR 7129]
Revision	Vol. 54	February 14, 1989	[54 FR 6670]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.60, Subpart W, shall be revised as follows:

Subpart W - "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants"

The provisions of 40 CFR Part 60 Subpart W, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart W			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 40	August 6, 1975	[40 FR 33156]
Revision	Vol. 42	July 25, 1977	[42 FR 37938]
Revision	Vol. 48	February 17, 1983	[48 FR 7129]
Revision	Vol. 54	February 14, 1989	[54 FR 6670]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.60, Subpart X, shall be revised as follows:

Subpart X - "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities"

The provisions of 40 CFR Part 60 Subpart X, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart X			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 40	August 6, 1975	[40 FR 33156]
Revision	Vol. 42	July 25, 1977	[42 FR 37938]
Revision	Vol. 54	February 14, 1989	[54 FR 6670]
Revision	Vol. 62	April 15, 1997	[62 FR 18280]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.60, Subpart AAA, shall be revised as follows:

Subpart AAA - "Standards of Performance for New Residential Wood Heaters"

The provisions of 40 CFR Part 60 Subpart AAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart AAA			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 53	February 26, 1988	[53 FR 5873]

40 CFR Part 60 Subpart AAA			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 53	April 12, 1988	[53 FR 12009]
Revision	Vol. 53	April 26, 1988	[53 FR 14889]
Revision	Vol. 57	February 13, 1992	[57 FR 5328]
Revision	Vol. 60	June 29, 1995	[60 FR 33925]
Revision	Vol. 63	November 24, 1998	[63 FR 64874]
Revision	Vol. 64	February 12, 1999	[64 FR 7466]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 80	March 16, 2015	[80 FR 13671]

Regulation 61-62.60, Subpart OOOO, shall be revised as follows:

Subpart OOOO - "Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution"

The provisions of 40 CFR Part 60 Subpart OOOO, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart OOOO			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 77	August 16, 2012	[77 FR 49490]
Revision	Vol. 78	September 23, 2013	[78 FR 58416]
Revision	Vol. 79	December 31, 2014	[79 FR 79018]
Revision	Vol. 80	August 12, 2015	[80 FR 48262]

Regulation 61-62.60, Subpart PPPP, shall be added in alpha-numeric order as follows:

Subpart PPPP - [Reserved]

Regulation 61-62.60, Subpart QQQQ, shall be added in alpha-numeric order as follows:

Subpart QQQQ - "Standards of Performance For New Residential Hydronic Heaters And Forced-Air Furnaces"

The provisions of 40 CFR Part 60 Subpart QQQQ, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart QQQQ			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 80	March 16, 2015	[80 FR 13671]

Regulation 61-62.60, Subpart TTTT, shall be added in alpha-numeric order as follows:

Subpart TTTT - "Standards of Performance For Greenhouse Gas Emissions For Electric Generating Units"

The provisions of 40 CFR Part 60 Subpart TTTT, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart TTTT			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 80	October 23, 2015	[80 FR 64509]

Regulation 61-62.63, ***National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories***

Regulation 61-62.63, Subpart A, shall be revised as follows:

Subpart A - "General Provisions"

The provisions of ~~Title~~ 40 Code of Federal Regulations (CFR) Part 63 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 59	March 16, 1994	[59 FR 12430]
Revision	Vol. 59	April 22, 1994	[59 FR 19453]
Revision	Vol. 59	December 6, 1994	[59 FR 62589]
Revision	Vol. 60	January 25, 1995	[60 FR 4963]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 60	September 1, 1995	[60 FR 45980]
Revision	Vol. 61	May 21, 1996	[61 FR 25399]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 62	December 10, 1997	[62 FR 65024]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 63	May 13, 1998	[63 FR 26465]
Revision	Vol. 63	September 21, 1998	[63 FR 50326]
Revision	Vol. 63	October 7, 1998	[63 FR 53996]
Revision	Vol. 63	December 1, 1998	[63 FR 66061]
Revision	Vol. 64	January 28, 1999	[64 FR 4300]
Revision	Vol. 64	February 12, 1999	[64 FR 7468]
Revision	Vol. 64	April 12, 1999	[64 FR 17562]
Revision	Vol. 64	June 10, 1999	[64 FR 31375]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 67	February 14, 2002	[67 FR 6968]
Revision	Vol. 67	February 27, 2002	[67 FR 9156]
Revision	Vol. 67	April 5, 2002	[67 FR 16582]
Revision	Vol. 67	June 10, 2002	[67 FR 39794]
Revision	Vol. 67	July 23, 2002	[67 FR 48254]
Revision	Vol. 68	February 18, 2003	[68 FR 7706]
Revision	Vol. 68	April 21, 2003	[68 FR 19375]
Revision	Vol. 68	May 6, 2003	[68 FR 23898]

40 CFR Part 63 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 68	May 8, 2003	[68 FR 24653]
Revision	Vol. 68	May 20, 2003	[68 FR 27646]
Revision	Vol. 68	May 23, 2003	[68 FR 28606]
Revision	Vol. 68	May 27, 2003	[68 FR 28774]
Revision	Vol. 68	May 28, 2003	[68 FR 31746]
Revision	Vol. 68	May 29, 2003	[68 FR 32172]
Revision	Vol. 68	May 30, 2003	[68 FR 32586]
Revision	Vol. 68	November 13, 2003	[68 FR 64432]
Revision	Vol. 68	December 19, 2003	[68 FR 70960]
Revision	Vol. 69	January 2, 2004	[69 FR 130]
Revision	Vol. 69	February 3, 2004	[69 FR 5038]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 69	April 19, 2004	[69 FR 20968]
Revision	Vol. 69	April 22, 2004	[69 FR 21737]
Revision	Vol. 69	April 26, 2004	[69 FR 22602]
Revision	Vol. 69	June 15, 2004	[69 FR 33474]
Revision	Vol. 69	July 30, 2004	[69 FR 45944]
Revision	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	April 15, 2005	[70 FR 19992]
Revision	Vol. 70	May 20, 2005	[70 FR 29400]
Revision	Vol. 70	October 12, 2005	[70 FR 59402]
Revision	Vol. 71	February 16, 2006	[71 FR 8342]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 71	July 28, 2006	[71 FR 42898]
Revision	Vol. 71	December 6, 2006	[71 FR 70651]
Revision	Vol. 72	January 3, 2007	[72 FR 26]
Revision	Vol. 72	January 23, 2007	[72 FR 2930]
Revision	Vol. 72	July 16, 2007	[72 FR 38864]
Revision	Vol. 72	October 29, 2007	[72 FR 61060]
Revision	Vol. 72	November 16, 2007	[72 FR 64860]
Revision	Vol. 72	December 26, 2007	[72 FR 73180]
Revision	Vol. 72	December 28, 2007	[72 FR 74088]
Revision	Vol. 73	January 2, 2008	[73 FR 226]
Revision	Vol. 73	January 9, 2008	[73 FR 1738]
Revision	Vol. 73	January 10, 2008	[73 FR 1916]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	February 7, 2008	[73 FR 7210]
Revision	Vol. 73	March 7, 2008	[73 FR 12275]
Revision	Vol. 73	July 23, 2008	[73 FR 42978]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	June 25, 2009	[74 FR 30366]
Revision	Vol. 74	October 28, 2009	[74 FR 55670]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]

40 CFR Part 63 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	February 17, 2011	[76 FR 9450]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 17, 2012	[77 FR 22848]
Revision	Vol. 77	September 11, 2012	[77 FR 55698]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 78	February 1, 2013	[78 FR 7488]
Revision	Vol. 78	June 20, 2013	[78 FR 37133]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 79	March 27, 2014	[79 FR 17340]
Revision	Vol. 80	June 30, 2015	[80 FR 37365]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]
Revision	Vol. 80	September 18, 2015	[80 FR 56699]
Revision	Vol. 80	October 15, 2015	[80 FR 62389]
Revision	Vol. 80	October 26, 2015	[80 FR 65469]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 80	December 4, 2015	[80 FR 75817]

Regulation 61-62.63, Subpart N, shall be revised as follows:

Subpart N - "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks"

The provisions of 40 CFR Part 63 Subpart N, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart N			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 60	January 25, 1995	[60 FR 4948]
Revision	Vol. 60	May 24, 1995	[60 FR 27598]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 61	June 3, 1996	[61 FR 27785]
Revision	Vol. 62	January 30, 1997	[62 FR 4463]
Revision	Vol. 64	December 14, 1999	[64 FR 69637]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 69	July 19, 2004	[69 FR 42885]
Revision	Vol. 70	December 19, 2005	[70 FR 75320]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 77	September 19, 2012	[77 FR 58220]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 80	April 21, 2015	[80 FR 22116]

Regulation 61-62.63, Subpart Y, shall be revised as follows:

Subpart Y - "National Emission Standards for Marine Tank Vessel Loading Operations"

The provisions of 40 CFR Part 63 Subpart Y, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart Y			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 60	September 19, 1995	[60 FR 48388]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 76	April 21, 2011	[76 FR 22566]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]

Regulation 61-62.63, Subpart AA, shall be revised as follows:

Subpart AA - "National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants"

The provisions of 40 CFR Part 63 Subpart AA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart AA			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31376]
Revision	Vol. 66	December 17, 2001	[66 FR 65072]
Revision	Vol. 67	June 12, 2002	[67 FR 40578]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.63, Subpart BB, shall be revised as follows:

Subpart BB - "National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizer Production Plants"

The provisions of 40 CFR Part 63 Subpart BB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart BB			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31382]

40 CFR Part 63 Subpart BB			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 66	December 17, 2001	[66 FR 65072]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]

Regulation 61-62.63, Subpart CC, shall be revised as follows:

Subpart CC - "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries"

The provisions of 40 CFR Part 63 Subpart CC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart CC			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 60	August 18, 1995	[60 FR 43260]
Revision	Vol. 60	September 27, 1995	[60 FR 49976]
Revision	Vol. 61	February 23, 1996	[61 FR 7051]
Revision	Vol. 61	June 12, 1996	[61 FR 29878]
Revision	Vol. 61	June 28, 1996	[61 FR 33799]
Revision	Vol. 62	February 21, 1997	[62 FR 7938]
Revision	Vol. 63	March 20, 1998	[63 FR 13537]
Revision	Vol. 63	May 18, 1998	[63 FR 27212]
Revision	Vol. 63	June 9, 1998	[63 FR 31361]
Revision	Vol. 63	August 18, 1998	[63 FR 44140]
Revision	Vol. 65	May 8, 2000	[65 FR 26491]
Revision	Vol. 65	July 6, 2000	[65 FR 41594]
Revision	Vol. 66	May 25, 2001	[66 FR 28840]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 74	October 28, 2009	[74 FR 55670]
Revision	Vol. 75	June 30, 2010	[75 FR 37730]
Revision	Vol. 76	July 18, 2011	[76 FR 42052]
Revision	Vol. 78	June 20, 2013	[78 FR 37133]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]

Regulation 61-62.63, Subpart DD, shall be revised as follows:

Subpart DD - "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations"

The provisions of 40 CFR Part 63 Subpart DD, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DD			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34140]
Revision	Vol. 64	July 20, 1999	[64 FR 38950]
Revision	Vol. 66	January 8, 2001	[66 FR 1263]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	March 18, 2015	[80 FR 14247]

Regulation 61-62.63, Subpart GG, shall be revised as follows:

Subpart GG - "National Emission Standards for Aerospace Manufacturing and Rework Facilities"

The provisions of 40 CFR Part 63 Subpart GG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart GG			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 60	September 1, 1995	[60 FR 45956]
Revision	Vol. 61	February 9, 1996	[61 FR 4903]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 63	March 27, 1998	[63 FR 15006]
Revision	Vol. 63	September 1, 1998	[63 FR 46526]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 8, 2000	[65 FR 76941]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 80	December 7, 2015	[80 FR 76151]

Regulation 61-62.63, Subpart LL, shall be revised as follows:

Subpart LL - "National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants"

The provisions of 40 CFR Part 63 Subpart LL, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart LL			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 62	October 7, 1997	[62 FR 52407]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 70	November 2, 2005	[70 FR 66280]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]

40 CFR Part 63 Subpart LL			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 80	October 15, 2015	[80 FR 62389]

Regulation 61-62.63, Subpart NN, shall be revised as follows:

~~**Subpart NN - [Reserved]**~~

Subpart NN - "National Emissions Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources"

The provisions of 40 CFR Part 63 Subpart NN, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart NN			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 80	July 29, 2015	[80 FR 45279]

Regulation 61-62.63, Subpart DDD, shall be revised as follows:

Subpart DDD - "National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production"

The provisions of 40 CFR Part 63 Subpart DDD, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DDD			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	June 1, 1999	[64 FR 29503]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 76	December 1, 2011	[76 FR 74708]
Revision	Vol. 80	July 29, 2015	[80 FR 45279]

Regulation 61-62.63, Subpart LLL, shall be revised as follows:

Subpart LLL - "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry"

The provisions of 40 CFR Part 63 Subpart LLL, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart LLL			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31898]
Revision	Vol. 64	September 30, 1999	[64 FR 52828]
Revision	Vol. 67	April 5, 2002	[67 FR 16614]

40 CFR Part 63 Subpart LLL			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 67	December 6, 2002	[67 FR 72580]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	December 20, 2006	[71 FR 76518]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 78	February 12, 2013	[78 FR 10006]
Revision	Vol. 80	July 27, 2015	[80 FR 44771]
Revision	Vol. 80	September 11, 2015	[80 FR 54728]

Regulation 61-62.63, Subpart NNN, shall be revised as follows:

Subpart NNN - "National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing"

The provisions of 40 CFR Part 63 Subpart NNN, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart NNN			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31695]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	July 29, 2015	[80 FR 45279]

Regulation 61-62.63, Subpart RRR, shall be revised as follows:

Subpart RRR - "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production"

The provisions of 40 CFR Part 63 Subpart RRR, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart RRR			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 65	March 23, 2000	[65 FR 15690]
Revision	Vol. 67	June 14, 2002	[67 FR 41118]
Revision	Vol. 67	August 13, 2002	[67 FR 52616]
Revision	Vol. 67	September 24, 2002	[67 FR 59787]
Revision	Vol. 67	November 8, 2002	[67 FR 68038]
Revision	Vol. 67	December 30, 2002	[67 FR 79808]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 69	September 3, 2004	[69 FR 53980]
Revision	Vol. 70	October 3, 2005	[70 FR 57513]

40 CFR Part 63 Subpart RRR			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 70	December 19, 2005	[70 FR 75320]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 80	September 18, 2015	[80 FR 56699]

Regulation 61-62.63, Subpart UUU, shall be revised as follows:

Subpart UUU - "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units"

The provisions of 40 CFR Part 63 Subpart UUU, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart UUU			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 67	April 11, 2002	[67 FR 17762]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	February 9, 2005	[70 FR 6930]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]

Regulation 61-62.63, Subpart XXX, shall be revised as follows:

Subpart XXX - "National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese"

The provisions of 40 CFR Part 63 Subpart XXX, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart XXX			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 64	May 20, 1999	[64 FR 27458]
Revision	Vol. 66	March 22, 2001	[66 FR 16007]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	June 30, 2015	[80 FR 37365]

Regulation 61-62.63, Subpart DDDDD, shall be revised as follows:

~~**Subpart DDDDD - [Reserved]**~~

Subpart DDDDD - "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Industrial Boilers and Process Heaters"

The provisions of 40 CFR Part 63, Subpart DDDDD as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DDDDD			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	December 28, 2005	[70 FR 76918]
Revision	Vol. 71	April 20, 2006	[71 FR 20445]
Revision	Vol. 71	December 6, 2006	[71 FR70651]
Revision	Vol. 76	March 21, 2011	[76 FR 15608]
Revision	Vol. 76	May 18, 2011	[76 FR 28662]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 80	November 20, 2015	[80 FR 72789]

Regulation 61-62.63, Subpart JJJJJ, shall be revised as follows:

~~**Subpart JJJJJ - [Reserved]**~~

Subpart JJJJJ - "National Emission Standards For Hazardous Air Pollutants For Brick And Structural Clay Products Manufacturing"

The provisions of 40 CFR Part 63, Subpart JJJJJ, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart JJJJJ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 68	May 16, 2003	[68 FR 26690]
Revision	Vol. 68	May 28, 2003	[68 FR 31744]
Revision	Vol. 71	April 20, 2006	[71 FR 20445]
Revision	Vol. 71	June 23, 2006	[71 FR 36014]
Revision	Vol. 80	October 26, 2015	[80 FR 65469]

Regulation 61-62.63, Subpart KKKKK, shall be revised as follows:

~~**Subpart KKKKK - [Reserved]**~~

Subpart KKKKK - "National Emission Standards For Hazardous Air Pollutants For Clay Ceramics Manufacturing"

The provisions of 40 CFR Part 63, Subpart KKKKK, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart KKKKK			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 68	May 16, 2003	[67 FR 26690]
Revision	Vol. 68	May 28, 2003	[68 FR 31744]

40 CFR Part 63 Subpart KKKKK			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 71	April 20, 2006	[71 FR 20445]
Revision	Vol. 71	June 23, 2006	[71 FR 36014]
Revision	Vol. 80	October 26, 2015	[80 FR 65469]
Revision	Vol. 80	December 4, 2015	[80 FR 75817]

Regulation 61-62.63, Subpart UUUUU, shall be revised as follows:

Subpart UUUUU - "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units"

The provisions of 40 CFR Part 63 Subpart UUUUU, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart UUUUU			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 19, 2012	[77 FR 23399]
Revision	Vol. 77	August 2, 2012	[77 FR 45967]
Revision	Vol. 78	April 24, 2013	[78 FR 24073]
Revision	Vol. 79	November 19, 2014	[79 FR 68777, 68795]
Revision	Vol. 80	March 24, 2015	[80 FR 15510]

Regulation 61-62.63, Subpart YYYYY, shall be revised as follows:

Subpart YYYYY - "National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities"

The provisions of 40 CFR Part 63 Subpart YYYYY, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart YYYYY			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 72	December 28, 2007	[72 FR 74088]
Revision	Vol. 73	December 1, 2008	[73 FR 72727]
Revision	Vol. 74	February 26, 2009	[74 FR 8756]
Revision	Vol. 80	June 24, 2015	[80 FR 36247]

Regulation 61-62.63, Subpart DDDDDD, shall be revised as follows:

Subpart DDDDDD - "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources"

The provisions of 40 CFR Part 63 Subpart DDDDDD, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DDDDDD			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 72	January 23, 2007	[72 FR 2930]
Revision	Vol. 77	April 17, 2012	[77 FR 22848]
Revision	Vol. 80	February 4, 2015	[80 FR 5938]

ATTACHMENT D
Excerpt of the Notice of Drafting
Published in the *State Register* on February 26, 2016

30 DRAFTING NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control (Department) is proposing to amend Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (State Implementation Plan or SIP). Interested persons are invited to present their views concerning these amendments in writing to Caitlan Bell, Air Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via electronic mail at bellcl@dhec.sc.gov. To be considered, the Department must receive comments by 5:00 p.m. on March 28, 2016, the close of the drafting comment period.

Synopsis:

The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations throughout each calendar year. Recent federal amendments to 40 CFR Parts 50, 51, 52, 60, and 63 include clarification, guidance and technical amendments regarding state implementation plan (SIP) requirements, New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, and revisions to National Ambient Air Quality Standards.

The Department proposes to amend: Regulation 61-62.1, Section II, Permit Requirements; Regulation 61-62.5, Standard No.1, Emissions from Fuel Burning Operations; and Regulation 61-62.5, Standard 4, Emissions from Process Industries, to address periods of excess emissions during startup, shutdown, or malfunction (SSM) events as required by the EPA in response to a national petition for rulemaking and to address a finding of substantial inadequacy (referred to as a 'SIP call') (80 FR 33840, June 12, 2015).

The Department also proposes to amend: Regulation 61-62.1, Section III, Emissions Inventory and Emissions Statements; Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories; Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards; and the SIP, to incorporate by reference recent federal amendments promulgated from January 1, 2015, through December 31, 2015.

The Department may also propose other changes to Regulation 61-62 that may include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law.

ATTACHMENT E
Excerpt from the Notice of Proposed Regulation
Published in the *State Register* on June 24, 2016

Document No. 4650
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards

Preamble:

(1) Pursuant to the South Carolina Pollution Control Act, Section 48-1-10 et seq., along with 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. 42 U.S.C. Section 7416. The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations throughout each calendar year. Recent federal amendments to 40 CFR Parts 51, 52, 60, 61, 63 and 70 include clarification, guidance and technical revisions to SIP requirements promulgated pursuant to 42 U.S.C. 7410 & 7413, New Source Performance Standards ("NSPS") mandated by 42 U.S.C. 7411, and federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Source Categories.

(2) The Department therefore proposes to amend Regulation 61-62.1, *Section III, Emissions Inventory and Emissions Statements*; Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; Regulation 61-62.5, *Standard No. 2, Ambient Air Quality Standards*; and the SIP, to codify federal amendments to these standards promulgated from January 1, 2015, through December 31, 2015.

(3) The Department also proposes to amend: Regulation 61-62.1, *Section II, Permit Requirements*; Regulation 61-62.5, *Standard No.1, Emissions from Fuel Burning Operations*; and Regulation 61-62.5, *Standard 4, Emissions from Process Industries*, to address periods of excess emissions during startup, shutdown, or malfunction (SSM) events as required by the EPA in response to a national petition for rulemaking and to address a finding of substantial inadequacy (referred to as a 'SIP call') (80 FR 33840, June 12, 2015).

(4) The Department is also proposing other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law.

A Notice of Drafting for these proposed amendments was published in the *State Register* on February 26, 2016. The Notice was also sent via the Department list serve to interested stakeholders on February 26, 2016.

Discussion of Proposed Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

Regulation 61-62.1, *Section II, Permit Requirements*

Regulation 61-62.1, *South Carolina Designated Facility Plan and New Source Performance Standards*: Paragraph L.2. is amended to delete the entire sentence, in order to address the SSM SIP Call rule.

ATTACHMENT F
Copy of Applicable Law

48-1-30. Promulgation of regulations; approval of alternatives.

The South Carolina Department of Health and Environmental Control ("Department") shall promulgate regulations to implement this chapter to govern the procedure of the Department with respect to meetings, hearings, filing of reports, the issuance of permits and all other matters relating to procedure. The regulations for preventing contamination of the air may not specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment. Except where the Department determines that it is not feasible to prescribe or enforce an emission standard or standard of performance, it may, by regulation, specify equipment, operational practice, or emission control method, or combination thereof. The Department may grant approval for alternate equipment, operational practice, or emission control method, or combination thereof, where the owner or operator of a source can demonstrate to the Department that such alternative is substantially equivalent to that specified.

ATTACHMENT G
EPA Comment Letter

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 27, 2016

Mr. Robert J. Brown, Jr., Director
Division of Air Assessment and Regulations
Bureau of Air Quality
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Brown:

Thank you for your letter dated June 27, 2016, transmitting a prehearing package regarding amendments to South Carolina's state implementation plan (SIP). These amendments are the subject of a public hearing and include South Carolina's response to the May 22, 2015, finding of substantial inadequacy and corresponding SIP Call for excess emissions during startups, shutdowns, and malfunctions. Thank you for your prompt response to the SIP Call. Also included in the prehearing package are various regulatory changes including administrative revisions, emissions inventory development, and new ambient air standards. We have completed our review and offer no comments at this time.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Mr. Brad Akers at 404-562-9089.

Sincerely,

R. Scott Davis
Chief
Air Planning and Implementation Branch

Enclosure

cc: Tony Lofton, Regulation and SIP Management Section

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SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
September 8, 2016

(X) ACTION
( ) INFORMATION

I. TITLE: Public Hearing before the Board and Consideration for Final Approval
Proposed Amendments of Regulation 61-79, *Hazardous Waste Management Regulations.*
Document Number 4651

Legislative review is required

II. SUBJECT: Request For Finding of Need and Reasonableness Pursuant to S.C. Code Section 1-23-111

III. FACTS:

1. Pursuant to S.C. Code Section 44-56-30, the South Carolina Department of Health and Environmental Control (Department) proposes to amend S.C. Regulation 61-79, *Hazardous Waste Management Regulations*, to adopt two final rules published in the Federal Register by the United States Environmental Protection Agency (EPA).

2. The Department is proposing to amend R.61-79 to adopt the the "Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities," published on January 3, 2014 at 79 FR 350-364

3. The Department is proposing to amend R.61-79 to adopt the "Revisions to the Definition of Solid Waste," published on January 13, 2015 at 80 FR 1694-1814.

4. Pursuant to S.C. Code Section, 1-23-120(H)(1), the proposed amendments of Regulation 61-79 will require legislative review.

5. Pursuant to S.C. Code Section, 1-23-110(A)(1),the Department initiated the statutory process to amend R. 61-79 by publication of a Notice of Drafting in the *State Register* on November 27, 2015. The public comment period ended on December 29, 2015. Notice was also published in the *DHEC Regulation Development Update* on the Department's Regulations website. No comments were received. A copy of the Notice of Drafting is submitted as Attachment F.

6. A Summary of Proposed Revisions and Text of the Proposed Amendments of R. 61-79 are submitted as Attachments B and C.

7. Pursuant to agency internal review policy, all appropriate personnel have reviewed the proposed amendment.

8. The Board granted Department staff approval on June 9, 2016, to publicly notice the proposed regulation and to hold a staff-conducted informational forum. Pursuant to S.C. Code Section 1-23-110(A)(3), the Department published a Notice of Proposed Regulations containing the text and notice of opportunity for public comment in the *State Register* on June 24, 2016 as Document No. 4651 (See

Attachment E). Notice was also published in the *DHEC Regulation Development Update* on the Department's Regulations website.

9. The Department has received one comment in support of the proposed amendments to adopt the "Revisions to the Definition of Solid Waste." This comment is submitted as Attachment D.

10. The Department held a Staff Informational Forum on July 28, 2016. A representative from Fuji Film expressed support for the "Revisions to the Definition of Solid Waste."

11. The Department requests the Board conduct a public hearing pursuant to S.C. Code Section 1-23-111 and find for the need and reasonableness of the proposed amendments of Regulation 61-79.

IV. ANALYSIS:

The proposed amendments will support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments will: revise the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions; and revise several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act. See the Statement of Need and Reasonableness submitted as Attachment A.

V. RECOMMENDATION:

Department staff recommend that the Board find for the need and reasonableness of the proposed legulation and approve it for publication in the *State Register*.

Daphne G. Neel
Chief
Bureau of Land and Waste Management

Myra Reece
Director of Environmental Affairs
Environmental Quality Control

Attachments

A. Statement of Need and Reasonableness
B. Summary of Proposed Revisions
C. Text of Proposed Amendments
D. Public Comments
E. Excerpt *State Register* Notice of Proposed Regulation
F. *State Register* Notice of Drafting

ATTACHMENT A
Statement of Need and Reasonableness and Rationale
Regulation 61-79, Hazardous Waste Management Regulations
September 8, 2016

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: The proposed amendments of R.61-79 will support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments will: revise the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions; and revise several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act.

Legal Authority: The legal authority for R.61-79 is S.C. Code Section 44-56-30.

Plan for Implementation: The proposed amendments will take effect upon approval by the S.C. General Assembly and publication in the *State Register*. An electronic copy of R.61-79, that includes these latest amendments, will be published on the Department's Regulation Development website at: http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/. At this site, click on the Land and Waste Management category and scroll down to R.61-79. Subsequently, this regulation will be published on the S.C. Legislature website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

1. The Department has amended R.61-79 to adopt the "Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities," published on January 3, 2014 at 79 FR 350-364. The rule revises the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions.

2. The Department has amended R.61-79 to adopt the "Revisions to the Definition of Solid Waste," published on January 13, 2015 at 80 FR 1694-1814. The rule revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. Sections of the Rule cover Definition of Solid Waste exclusions and non-waste determinations, including provisions from the 2008 Definition of Solid Waste Rule and revisions from the 2015 Definition of Solid Waste Final Rule and a remanufacturing exclusion.

The proposed changes are necessary to maintain federally delegated program authority due to recent changes in the applicable federal regulations. The EPA has authorized South Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, the EPA continues to exercise oversight including the ability to revoke program authorization to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. The EPA periodically promulgates regulations that are either mandatory or optional for the states to adopt. Because the changes proposed herein are optional for states to adopt, legislative approval is required.

DETERMINATION OF COSTS AND BENEFITS:

There should be no increased cost to the State or its political subdivisions resulting from the proposed revisions. Amendments to R.61-79 will revise the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions, and ensure that the hazardous secondary materials recycling regulations encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary materials.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed revisions to R.61-79 will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

While there would be no detrimental effect on the environment and/or public health if the regulation is not implemented, the State's federally delegated authority to implement the hazardous waste management program in South Carolina would be compromised if the State's regulations are not consistent with or equivalent to the federal program. There could be a detrimental effect if the changes are not adopted because the State Hazardous Waste Management Program is federally delegated, and EPA continues to exercise program oversight. This includes the ability to revoke State program authorization if it determines that a State program is not equivalent to, consistent with, and no less stringent than the federal program.

Statement of Rationale:

R.61-79 contains requirements for hazardous waste management, including identification of waste, standards for generators, transporters, and owners/operators of treatment, storage, and disposal (TSD) facilities, procedures for permits for TSD facilities, investigation and cleanup of hazardous waste, and closure/post-closure requirements. The regulation is promulgated pursuant to the S.C. Hazardous Waste Management Act, Section 44-56-30. As an authorized State program, the regulations must be equivalent to and consistent with the EPA's regulations under RCRA. R. 61-79 has been amended numerous times

since it was first promulgated in 1984 to adopt federal regulations that are either mandatory or optional changes for an authorized State to adopt.

ATTACHMENT B
Summary of Proposed Revisions to
Regulation 61-79, Hazardous Waste Management Regulations
September 8, 2016

SECTION CITATION/EXPLANATION OF CHANGE:

1. The Department is proposing to amend R.61-79 to adopt the "Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities," published on January 3, 2014 at 79 FR 350-364:

260.10 Definitions. Add, in alphabetical order, the following new definition: "Carbon dioxide stream."

261.4(h). Add new subsection (h) by adding language that describes how carbon dioxide (CO2) streams that are to be injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration are excluded from the definition of hazardous waste provided that they comply with applicable Department of Transportation requirements for transportation of the CO2 streams, applicable UIC Class VI wells requirements, no other hazardous wastes are mixed with or otherwise co-injected with the CO2 stream, and generators and UIC Class VI well owners or operators claiming the exclusions must sign a certification statement that the conditions of the exclusion were met. This subsection also adds language that describes the length of time the certification must be kept on site and to whom and how it must be made available.

2. The Department is proposing to amend R.61-79 to adopt "Revisions to the Definition of Solid Waste," published on January 13, 2015 at 80 FR 1694-1814.

Checklist D2 – Definition of Solid Waste exclusions and non-waste determinations.

260.10 Definitions. Add, in alphabetical order, the following new definitions: "Hazardous secondary material generator;" "Intermediate facility;" "Land-based unit."

260.10 Definitions. Modify the definition of "Facility" by adding language that includes the management of hazardous secondary materials prior to reclamation. Modify the definition of "Transfer facility" by adding language that includes hazardous secondary materials.

260.30 Heading. Revise by adding "Non-waste determinations and."

260.30. Revise the introductory text to add a reference to procedures in Section 260.34.

260.30(b). Revise subsection (b) by removing the word "and."

260.30(d). Add a new subsection (d) by adding language that the Department may determine that hazardous secondary materials that are reclaimed in a continuous industrial process are not solid wastes.

260.30(e). Add a new subsection (e) by adding language that the Department may determine that hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate are not solid wastes.

260.30(f). Add a new subsection (f) by adding language that the Department may determine that hazardous secondary materials that are transferred for reclamation under 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards are not solid wastes.

260.31(d). Add a new subsection (d) by adding language that the Department may grant requests for a variance for classification as a solid waste those hazardous secondary materials that are transferred under 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards. The Department's decision will be based on a demonstration: that the facility is legitimate pursuant to 260.43; financial assurance conditions in 261.4(a)(24)(vi)(F) are met; the facility is not subject to a formal enforcement action; proper equipment, personnel training and emergency response requirements are met; reclamation residuals are properly handled; and potential risks to proximate populations from unhandled releases are addressed.

260.33. Revise the introductory text to include applications for non-waste determinations.

260.33(a). Revise this subsection to add non-waste determination and an additional regulatory citation.

260.34. Add a new section "Standards and criteria for non-waste determinations." This section adds language that requires facilities applying for a non-waste determination to explain or demonstrate why they cannot meet, or should not have to meet, the existing Definition of Solid Waste exclusions in 261.2 or 261.4.

261.1(c)(4). Revise this paragraph to add a reference to 261.4(a)(23) and (24) and language regarding smelting, melting and refining furnaces.

261.2(c)(3). Revise this paragraph to add a reference to 261.4(a)(23), (24) and (27). NOTE: This is the same revision found in Checklist E.

261.2(c)(4) Table 1. Revise column 3 to amend the regulatory citations. NOTE: This is the same revision found in Checklist E.

261.4(a)(23). Revise this section by adding language that describes the conditional exclusion from the definition of solid waste those hazardous secondary materials that are legitimately reclaimed within the United States or its territories and under the control of the generator. This includes: a codified definition of "contained;" adding recordkeeping requirements for same company and toll manufacturing reclamation; making notification a condition of the exclusion; adding a requirement to document that recycling under the exclusion is legitimate; and adding emergency preparedness and response conditions. In addition, the speculative accumulation provisions have a recordkeeping requirement.

261.4(a)(24). Revise this section by adding language that describes how hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste. This includes: showing that the material is not speculatively accumulated, not handled by any person or facility other than the generator, transporter, intermediate facility or reclaimer and is stored and packaged properly; the material is not subject to material-specific management conditions when reclaimed and is not a spent lead-acid battery; reclamation of the material is legitimate; and the

generator satisfies conditions regarding containment, transport to a verified reclamation facility and specific record keeping requirements.

Subpart H. Add new Subpart H to R.61-79.261, Subpart H – Financial Requirements for Management of Excluded Hazardous Secondary Materials. This Subpart adds new language regarding financial requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 261.4(a)(24).

Subparts K-L. Add new Subparts K-L and reserve them.

Subpart M. Add new Subpart M to R.61-79.261, Subpart M – Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials. This Subpart adds new language regarding applicability; preparedness and prevention; emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material and contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

270.42, Appendix I – Classification of Permit Modification. Add entries 9 and 10 in the table under section A. General Permit Provisions.

Checklist E – Remanufacturing exclusion

260.10 Definitions. Add, in alphabetical order, the following new definition: "Remanufacturing."

261.2(c)(3). Revise this paragraph to add a reference to 261.4(a)(23), (24) and (27). NOTE: This is the same revision found in Checklist D2.

261.2(c)(4) Table 1. Revise column 3 to amend the regulatory citations. NOTE: This is the same revision found in Checklist D2.

261.4(a)(27). Add a new item (27) by adding language that eighteen (18) spent solvents are eligible for the remanufacturing exclusion. This includes: requirements for notification, a remanufacturing plan, a record of shipments and confirmation of receipts, management in tanks and containers and a prohibition on speculative accumulation.

Subpart I. Add new Subpart I to R.61-79.261, Subpart I – Use and Management of Containers. This Subpart adds new language regarding applicability, condition of containers, compatibility of hazardous secondary materials with containers, management of containers, containment, special requirements for ignitable, reactive hazardous secondary material or incompatible materials and air emission standards.

Subpart J. Add new Subpart J to R.61-79.261, Subpart J – Tank Systems. This Subpart adds new language regarding applicability, assessment of existing tank system's integrity, containment and detection of releases, general operating requirements, response to leaks or spills and disposition of leaking or unfit-for-use tank systems, termination of remanufacturing exclusion, special requirements for ignitable, reactive and incompatible materials and air emission standards.

Subpart AA. Add new Subpart AA to R.61-79.261, Subpart AA – Air Emission Standards for Process Vents. This Subpart adds new language regarding applicability, definitions, standards for process vents and closed-vent systems and control devices, test methods and procedures and recordkeeping requirements.

Subpart BB. Add new Subpart BB to R.61-79.261, Subpart BB – Air Emission Standards for Equipment Leaks. This Subpart adds new language regarding applicability, definitions, standards, alternative standards, test methods and procedures and recordkeeping requirements.

Subpart CC. Add new Subpart CC to R.61-79.261 Subpart CC – Air Emission Standards for Tanks and Containers. This Subpart adds new language regarding applicability, definitions, standards for tanks, containers and closed-vent systems and control devices, material determination procedures, inspection and monitoring requirements and recordkeeping requirements.

ATTACHMENT C
Text of Proposed Amendment to
Regulation 61-79, Hazardous Waste Management Regulations
September 8, 2016

Text of Proposed Amendment to Regulation 61-79 for Public Comment:

Legend: Underlined text = new text.
~~Strikeout text~~ = text being deleted

Revise 61-79.260.10 to add the following definitions in alphabetical order within this section:

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (example, power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of R.61-79.261.2(a)(2)(ii) and R.61-79.261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

Revise 61-79.260.10 to modify the following definitions within this section:

''Facility'' means: (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste~~.~~, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them) (12/92). (2) For the purpose of implementing corrective action under R.61-79.264.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (12/93) (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to R.61-79.264.101, but is subject to corrective action requirements if the site is located within such a facility.

‘‘Transfer facility’’ means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

Revise 61-79.260.30 section heading to read:

260.30. Non-waste determinations and v~~V~~ariances from classification as solid waste.

Revise 61-79.260.30 introductory text to read:

In accordance with the standards and criteria in ~~Section~~ R.61-79.260.31 and R.61-79.260.34 and the procedures in ~~Section~~ R.61-79.260.33 the Department may determine on a case by case basis that the following recycled materials are not solid wastes:

Revise 61-79.260.30 (b) to read:

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; ~~and~~ (revised 5/96)

Revise 61-79.260.30 to add subsection 260.30(d) to read:

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

Revise 61-79.260.30 to add subsection 260.30(e) to read:

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

Revise 61-79.260.30 to add subsection 260.30(f) to read:

(f) Hazardous secondary materials that are transferred for reclamation under R.61-79.261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards.

Revise 61-79.260.31 to add subsection 260.31(d) to read:

(d) The Department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under R.61-79.261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. The Department's decision will be based on the following criteria:

(1) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to R.61-79.260.43;

(2) The reclamation facility or intermediate facility must satisfy the financial assurance condition in R.61-79.261.4(a)(24)(vi)(F);

(3) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials

properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

(4) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under R.61-79 part 261 Subpart M;

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment, and

(6) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

Revise 61-79.260.33 introductory text to read:

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste ~~or~~, applications to classify particular enclosed controlled flame combustion devices as boilers~~:~~, or applications for non-waste determinations.

Revise 61-79.260.33(a) to read:

(a) The applicant must apply to the Department for the variance or non-waste determination. The application must address the relevant criteria contained in ~~sections~~ R.61-79.260.31, ~~or~~ R.61-79.260.32, or R.61-79.260.34, as applicable (revised 12/92; 5/96).

Revise 61-79.260 to add section 61-79.260.34 to read:

260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under R.61-79.260.31). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

(1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;

(2) The State requests that EPA review its determination; and

(3) EPA approves the State determination.

(b) The Department may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in R.61-79.260.43 and on the following criteria:

(1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under R.61-79.261.2 or R.61-79.261.4.

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in R.61-79.260.43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under R.61-79.261.2 or R.61-79.261.4.

Revise 61-79.261.1(c)(4) to read:

(4) A material is ‘‘reclaimed’’ if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of R.61-79.261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in R.61-79.266.100(d)(1) through (3), and if the residuals meet the requirements specified in R.61-79.266.112.

Revise 61-79.261.2(c)(3) to read:

(3) Reclaimed. Materials noted with an ‘‘~~x~~*’’ in column 3 of Table 1 are solid wastes when reclaimed (except as provided under 261.4(a)(17), or 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27)). Materials noted with a ‘‘ -- ’’ in column 3 of Table 1 are not solid wastes when reclaimed.

Revise 61-79.261.2(c)(4) Table 1, Column 3 (first row) to read:

261.2 Table 1 Summary of definitions of Solid Waste				
	Use Constituting Disposal (261.2(c)(1))	Energy Recovery/Fuel (261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in 261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(2~~5~~7)	Speculative Accumulation (261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in Section 261.31 or .32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in Section 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in Section 261.33	(*)	(*)	-	-
Scrap metal that is not excluded under 261.4(a)(13)	(*)	(*)	(*)	(*)

Revise 61-79.261.4(a)(23) to read:

(23) ~~[Reserved and Withdrawn]~~ Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming

facility are controlled by a person as defined in R.61-79.260.10, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in R.61-79.260.10 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (*e.g.*,financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in R.61-79.260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in R.61-79.261.1(c)(8).

(C) Notice is provided as required by R.61-79.260.42.

(D) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see R.61-79.266.80 and R.61-79.273.2).

(E) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in R.61-79.260.43(a). Documentation must be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Subpart M of this part are met.

Revise 61-79.261.4(a)(24) to read:

(24) ~~[Withdrawn]~~ Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in R.61-79.261.1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in R.61-79.260.10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under this paragraph (a) when reclaimed, and it is not a spent lead-acid battery (see R.61-79.266.80 and R.61-79.273.2);

(iv) The reclamation of the material is legitimate, as specified under R.61-79.260.43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in R.61-79.260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities) in the United States. A verified reclamation facility is a facility that has been granted a variance under R.61-79.260.31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under R.61-79.260.31(d) or the management of the hazardous secondary materials at that facility must be addressed under a RCRA Part B permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(3) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.*, financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(E) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in Subpart M of this part.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in R.61-79.260.10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(3) The type and quantity of hazardous secondary material in the shipment; and

(4) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous

secondary materials were received. This requirement may be satisfied by routine business records (e.g.,financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(D) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Subpart C of R.61-79. 261, or if they themselves are specifically listed in Subpart D of R.61-79.261, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of R.61-79.260 through R.61-79.272.

(F) The reclaimer and intermediate facility have financial assurance as required under Subpart H of R.61-79.261,

(G) The reclaimer and intermediate facility have been granted a variance under R.61-79.260.31(d) or have a RCRA Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under this paragraph (a)(24) of this section provide notification as required under R.61-79.260.42.

Revise 61-79.261.4(a) to add item 261.4(a)(27) to read:

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in paragraph (a)(27)(i) of this section in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in paragraph (a)(27)(i) of this section to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iv) After remanufacturing one or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending

chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR parts 704, 710-711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(v) After remanufacturing one or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer must:

(A) Notify the Department, and update the notification every two years per R.61-79.260.42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(1) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(2) The types and estimated annual volumes of spent solvents to be remanufactured,

(3) The processes and industry sectors that generate the spent solvents,

(4) The specific uses and industry sectors for the remanufactured solvents, and

(5) A certification from the remanufacturer stating "on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in R.61-79.261, Subparts AA (vents), BB (equipment) and CC (tank storage),";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Subparts I and J of R.61-79.261, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act

regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in R.61-79.261 Subparts AA (vents), BB (equipment) and CC (tank storage); and

(F) Meet the requirements prohibiting speculative accumulation per R.61-79.261.1(c)(8).

Revise 61-79.261.4 to add item 261.4(h) to read:

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in 40 CFR Parts 144 and 146 of the Underground Injection Control Program of the Safe Drinking Water Act, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream must be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream must be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in 40 CFR Parts 144 and 146;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under this paragraph (h), must have an authorized representative (as defined in R.61-79.260.10) sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under R.61-79.261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of the Safe Drinking Water Act.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under paragraph (h) of this section, must have an authorized representative (as defined in R.61-79.260.10) sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under R.61-79.261.4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in 40 CFR Parts 144 and 146.

(iii) The signed certification statement must be kept on-site for no less than three years, and must be made available within 72 hours of a written request from the Department, or their designee. The signed certification statement must be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in R.61-79.260.10) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement must also be readily accessible on the facility's publicly-available Web site (if such Web site exists) as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

Revise 61-79.261 to add Subpart H to read:

SUBPART H
Financial Requirements for Management of Excluded Hazardous Secondary Materials

261.140 Applicability.

(a) The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under R.61-79.261.4(a)(24), except as provided otherwise in this section.

(b) States and the Federal government are exempt from the financial assurance requirements of this subpart.

261.141 Definitions of terms as used in this subpart.

The terms defined in R.61-79.265.141(d), (f), (g), and (h) have the same meaning in this subpart as they do in R.61-79.265.141.

261.142 Cost estimate.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(1) The estimate must equal the cost of conducting the activities described in paragraph (a) of this section at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in R.61-79.265.141(d).) The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under R.61-79.265.5113(d), facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under R.61-79.265.5113(d) that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with R.61-79.261.143. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in R.61-79.261.143(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in paragraph (a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in paragraph (a) of this section. The revised cost estimate must be adjusted for inflation as specified in paragraph (b) of this section.

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted cost estimate.

261.143 Financial assurance condition.

Per R.61-79.261.4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under R.61-79.261.4(a)(24). He must choose from the options as specified in paragraphs (a) through (e) of this section.

(a) Trust fund. (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in R.61-79.261.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see R.61-79.261.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this section.

(4) Whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a) (5) or (6) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing. If the owner or operator begins final closure under Subpart G of R.61-79.264 or R.61-79.265, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with R.61-79.265.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

(8) The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(b) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in R.61-79.261.151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the

Department. This standby trust fund must meet the requirements specified in paragraph (a) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in paragraph (a) of this section;

(B) Updating of Schedule A of the trust agreement (see R.61-79.261.151(a)) to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under R.61-79.261.4(a)(24) or

(ii) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin closure issued by the Department becomes final, or within fifteen (15) days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section.

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) Letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in R.61-79.261.151(c).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in paragraph (a) of this section;

(B) Updating of Schedule A of the trust agreement (see R.61-79.261.151(a)) to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section.

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be

increased so that it at least equals the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Department.

(8) Following a determination by the Department that the hazardous secondary materials do not meet the conditions of the exclusion under R.61-79.261.4(a)(24), the Department may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(d) Insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Department At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in R.61-79.261.151(d).

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section. The term ‘‘face amount’’ means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under Subpart G of R.61-79.264 or R.61-79.265, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) After beginning partial or final closure under R.61-79.264 or R.61-79.265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements only if

the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Department has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (h) of this section, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in paragraph (i)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Department.

(10) The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(e) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1) (i) or (ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six-times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six-times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase “current cost estimates” as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (R.61-79.261.151(e)). The phrase “current plugging and abandonment cost estimates” as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in R.61-79.261.151(e); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (e)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (e)(3)(ii)of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in paragraph (e)(3) of this section if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number (if any issued), name, address, and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations in this subpart;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in paragraph (e)(3) of this section; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in paragraph (e)(3) of this section, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (e)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, he must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which

the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (e)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (e)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (e)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in R.61-79.261.151(g)(1). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) Following a determination by the Department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under R.61-79.261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in R.61-79.264 or R.61-79.265, as applicable, or establish a trust fund as specified in paragraph (a) of this section in the name of the owner or operator in the amount of the current cost estimate.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (a) through (d) of this section, respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Department of all such Regions. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under R.61-79.261.4(a)(24)(vi)(F) must submit a plan for removing all hazardous secondary material residues to the Department at least 180 days prior to the date on which he expects to cease to operate under the exclusion.

(2) The plan must include, at least:

(A) For each hazardous secondary materials storage unit subject to financial assurance requirements under R.61-79. 261.4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and

(B) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(C) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(D) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under R.61-79.261.4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Department will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved plan. The Department must assure that the approved plan is consistent with paragraph (h) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(4) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Department, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department, upon request, until he releases the owner or operator from the financial assurance requirements for R.61-79.261.4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per paragraph (h), the Department will notify the owner or operator in writing that he is no longer required under R.61-79.261.4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Department has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

261.144. [Reserved]

261.145. [Reserved]

261.146. [Reserved]

261.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under R.61-79.261.4(a)(24)(vi)(F), or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in R.61-79.261.151(h). The wording of the certificate of insurance must be identical to the wording specified in R.61-79.261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department, or Regional Administrators if the facilities are located in more than one Region. If requested by a Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Department in writing within (30) days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in R.61-79.260.10, which are used to manage hazardous secondary materials excluded under R.61-79.261.4(a)(24) or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b)(1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in R.61-79.261.151(h). The wording of the certificate of insurance must be identical to the wording specified in R.61-79.261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department, or Regional Administrators if the facilities are located in more than one Region. If requested by a Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted in writing to the Department. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by paragraph (a) or (b) of this section.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Department may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may

require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per R.61-79.261.143(h), the Department will notify the owner or operator in writing that he is no longer required under R.61-79.261.4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Department has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1) (i) or (ii) of this section:

(i) The owner or operator must have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either:

(1) At least 90 percent of his total assets; or

(2) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(1) At least 90 percent of his total assets; or

(2) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase “amount of liability coverage” as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section and

the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of R.61-79.264.147 and R.61-79.265.147.

(3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in R.61-79.261.151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by R.61-79.261.143(e), *and* liability coverage, he must submit the letter specified in R.61-79.261.151(f) to cover both forms of financial responsibility; a separate letter as specified in R.61-79.261.151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (f)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in paragraph (f)(3) of this section if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Regional Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in paragraph (f)(3) of this section; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in R.61-79.261.151(g)(2). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(A) The State in which the guarantor is incorporated; and

(B) Each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in this section and R.61-79.264.151(g)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and if

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and R.61-79.261.151(h)(2) is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in R.61-79.261.151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in R.61-79.261.151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in R.61-79.261.151(k).

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(i) The State in which the surety is incorporated; and

(ii) Each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this section and R.61-79.261.151(k) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in R.61-79.261.151(l).

261.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in R.61-79.261.143(e) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of R.61-79.261.143 or R.61-79.261.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

261.149 Use of State-required mechanisms.

(a) For a reclamation or intermediate facility located in a State where EPA is administering the requirements of this subpart but where the State has regulations that include requirements for financial assurance of closure or liability coverage, an owner or operator may use State-required financial mechanisms to meet the requirements of R.61-79.261.143 or R.61-79.261.147 if the Regional Administrator determines that the State mechanisms are at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms principally in terms of certainty of the availability of: Funds for the required closure activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator evidence of the establishment of the mechanism together with a letter requesting that the State-required mechanism be considered acceptable for meeting the requirements of this subpart. The submission must include the following information: The facility's EPA Identification Number (if available); name and address; and the amount of funds for closure or liability coverage assured by the mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of R.61-79.261.143 or R.61-79.261.147, as applicable.

(b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal to the amount required by this subpart.

261.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure or liability requirements of this subppart or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of R.61-79.261.143 or R.61-79.261.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number (if available); name and address; and the amount of funds for closure or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of R.61-79.265.143 or R.61-79.265.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this

subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

261.151 Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in R.61-79. 261.143(a) must be worded as noted in R.61-79.261.151 Appendix A-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in R.61-79.261.143(a). This document must be worded as noted in R.61-79.264.151 Appendix A-2, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. State requirements may differ on the proper content of this acknowledgment.

(b) A surety bond guaranteeing payment into a trust fund, as specified in R.61-79.261.143(b) must be worded as noted in R.61-79.264.151 Appendix B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(c) A letter of credit, as specified in R.61-79.261.143(c) must be worded as noted in R.61-79.264.151 Appendix C, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(d) A certificate of insurance, as specified in R.61-79.261.143(e) must be worded as noted in R.61-79.264.151 Appendix D, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(e) A letter from the chief financial officer, as specified in R.61-79.261.143(e) must be worded as noted in R.61-79.264.151 Appendix E, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(f) A letter from the chief financial officer, as specified in R.61-79.261.147(f) must be worded as noted in R.61-79.264.151 Appendix F, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(g)(1) A corporate guarantee, as specified in R.61-79.261.143(e) must be worded as noted in R.61-79.264.151 Appendix G(1), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) A guarantee, as specified in Sec. R.61-79.261.147(g). This document must be worded as noted in R.61-79.264.151 Appendix G(2), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(h) A hazardous waste facility liability endorsement as required in R.61-79.261.147 must be worded as noted in R.61-79.264.151 Appendix H, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(i) A certificate of liability insurance as required in R.61-79.261.147 must be worded as noted in R.61-79.264.151 Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(j) A letter of credit, as specified in R.61-79.261.147(h) must be worded as noted in R.61-79.264.151 Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(k) A surety bond, as specified in R.61-79.261.147(i) must be worded as noted in R.61-79.264.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(l)(1) A trust agreement, as specified in R.61-79.261.147(j) must be worded as noted in R.61-79.264.151 Appendix L-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Appendix L-2 contains an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in R.61-79.261.147(j). Instructions in brackets are to be replaced with the relevant information and the brackets deleted. State requirements may differ on the proper content of this acknowledgment.

(m)(1) A standby trust agreement, as specified in 261.147(h) must be worded as as noted in R.61-79.264.151 Appendix M-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Appendix M-2 contains an example of the certification of acknowledgment which must accompany the trust for a trust fund as specified in R.61-79.261.147(h). Instructions in brackets are to be replaced with the relevant information and the brackets deleted. State requirements may differ on the proper content of this acknowledgement.

261.151 APPENDIX A-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

TRUST AGREEMENT, the "Agreement," entered into as of _____[date] by and between _____ [name of the owner or operator], a _____ [name of State]_____ [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and_____ [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

WHEREAS, the South Carolina Department of Health and Environmental Control, hereafter referred to as the "Department," an agency of the State of South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under parts 264, or 265, or satisfying the conditions of the exclusion under R.61-79.261.4(a)(24) shall provide assurance that funds will be available if needed for care of the facility under R.61-79.264 or R.61-79.265, Subparts G, as applicable,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under R.61-79.261.4(a)(24). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of the performance of activities required under Subpart G of R.61-79.264 or R.61-79.265 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-79.261.151(a)(1) as such regulations were constituted on the date first above written.

_____
[Signature of Grantor]
[Title]

Attest:_____
_____[Title]
_____[Seal]

_____
[Signature of Trustee]

Attest:_____
_____[Title]
_____[Seal]

261.151 APPENDIX A-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Certificate of Acknowledgement (must accompany the trust agreement):

State of South Carolina

County of_____

On this_____ [date], before me personally came_____ [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at _____ [address], that she/he is _____ [title] of _____ [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate

seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]_____

261.151 APPENDIX B

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Surety bond: guaranteeing payment into a Trust Fund.

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

Principal: _____ [legal name and business address of owner or operator]

Type of Organization: _____ [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): _____ [name(s) and business address(es)]

EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond: _____

Total penal sum of bond: $ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the South Carolina Department of Health and Environmental Control (hereinafter called the "Department"), in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under R.61-79.261.4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under R.61-79.261.4(a)(24), and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under R.61-79.261.4(a)(24) and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under R.61-79.261.4(a)(24),

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Department or an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of R.61-79.261, as applicable, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical

to the wording specified in R.61-79.261.151(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

Corporate Surety(ies)

[Name and address] _____

[State of incorporation:] _____

Liability limit: $_____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

261.151 APPENDIX C

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Irrevocable Standby Letter of Credit

Chief

Bureau of Land and Waste Management

2600 Bull Street

Columbia, SC 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary

facility(ies) no longer meet the conditions of the exclusion under R.61-79.261.4(a)(24), at the request and for the account of _____ [owner's or operator's name and address] up to the aggregate amount of _____ [in words] U.S. dollars $_____, available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the South Carolina Department of Health and Environmental Control."

This letter of credit is effective as of _____ [date] and shall expire on _____ [date at least 1 year later], but such expiration date shall be automatically extended for a period of _____ [at least 1 year] on _____ [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and _____ [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of _____ [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in R.61-79. 261.151(c) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] _____

[Date] _____

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

261.151 APPENDIX D

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"): _____

Name and Address of Insured (herein called the "Insured"): _____

Facilities Covered:

[List for each facility:

EPA ID# _____

NAME _____

ADDRESS _____

AMOUNT OF INSURANCE FOR ALL FACILITIES COVERED _____

(These amounts must total the face amount shown below.)]

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of R.61-79.261.143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Department, the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in R.61-79.261.151(d) such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

[Date] _____

261.151 APPENDIX E

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Letter From Chief Financial Officer

Chief

Bureau of Land and Waste Management

2600 Bull Street

Columbia, SC 29201

Dear Sir or Madam: I am the chief financial officer of _____ [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subpart H of R.61-79.261.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Subpart H of R.61-79.261. The current cost estimates covered by the test are shown for each facility: _____ ____.

2. This firm guarantees, through the guarantee specified in Subpart H of R.61-79.261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is _____ [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States outside of South Carolina, where the United States Environmental Protection Agency (EPA) is not administering the financial requirements of Subpart H of R.61-79.261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of R.61-79.261. The current cost estimates covered by such a test are shown for each facility: ____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either the Department through the financial test or any other financial assurance mechanism specified in Subpart H of R.61-79.261or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: ____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of R.61-79.264 and R.61-79.265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in Subpart H of R.61-79.264 and R.61-79.265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is _____ [insert one or more: (1) The direct or higher-tier parent corporation

of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States outside of South Carolina, where EPA is not administering the financial requirements of subpart H of R.61-79.264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of R.61-79.264 and R.61-79.265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the Department through the financial test or any other financial assurance mechanism specified in subpart H of R.61-79.264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

This firm _____ [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on _____ [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended _____ [date].

[Fill in Alternative I if the criteria of paragraph (e)(1)(i) of R.61-79.261.143 are used. Fill in Alternative II if the criteria of paragraph (e)(1)(ii) of R.61-79.261.143(e) are used.]

ALTERNATIVE I

	1.	Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above]....		$
*	2.	Total liabilities [If any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]		$
*	3.	Tangible net worth		$
*	4.	Net worth		$
*	5.	Current assets		$
*	6.	Current liabilities		$
	7.	Net working capital [line 5 minus line 6]		$
*	8.	The sum of net income plus depreciation, depletion, and amortization		$
*	9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)		$
			Yes	No
	10.	Is line 3 at least $10 million?		
	11.	Is line 3 at least 6 times line 1?		
	12.	Is line 7 at least 6 times line 1?		

*	13.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.		
	14.	Is line 9 at least 6 times line 1?		
	15.	Is line 2 divided by line 4 less than 2.0?		
	16.	Is line 8 divided by line 2 greater than 0.1?		
	17.	Is line 5 divided by line 6 greater than 1.5?		

ALTERNATIVE II

	1.	Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above]		$
	2.	Current bond rating of most recent issuance of this firm and name of rating service		
	3.	Date of issuance of bond		
	4.	Date of maturity of bond		
*	5.	Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]		$
*	6.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)		$
			Yes	No
	7.	Is line 5 at least $10 million?		
	8.	Is line 5 at least 6 times line 1?		
*	9.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.		
	10.	Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in R.61-79.261.151(e) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

261.151 APPENDIX F

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Letter From Chief Financial Officer

Chief

Bureau of Land and Waste Management

2600 Bull Street

Columbia, SC 29201

Dear Sir or Madam: I am the chief financial officer of _____ [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under R.61-79.261.147 [insert "and costs assured R.61-79.261.143(e)" if applicable] as specified in Subpart H of R.61-79.261.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of R.61-79 part 261: ____

The firm identified above guarantees, through the guarantee specified in Subpart H of part 261, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of R.61-79 parts 264 and 265:____

The firm identified above guarantees, through the guarantee specified in Subpart H of R.61-79 parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under R.61-79.261.143(e) or closure or post-closure care costs under R.61-79.264.143, R.61-79.264.145, R.61-79.265.143 or R.61-79.265.145, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Subpart H of R.61-79.261. The current cost estimates covered by the test are shown for each facility:_____.

2. This firm guarantees, through the guarantee specified in Subpart H of part R.61-79.261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee_____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States outside of South Carolina where the United States Environmental Protection Agency or some designated authority is not administering the financial requirements of Subpart H of R.61-79.261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of R.61-79.261. The current cost estimates covered by such a test are shown for each facility:_____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in Subpart H of R.61-79.261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of R.61-79 .264 and R.61-79.265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in Subpart H of R.61-79.264 and R.61-79.265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____].
[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States outside of South Carolina where the United States Environmental Protection Agency or some designated authority is not administering the financial requirements of Subpart H of R.61-79.264 or R.61-79.265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of R.61-79. 264 and R.61-79.265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the

Department through the financial test or any other financial assurance mechanism specified in Subpart H of R.61-79. 264 and R.61-79.265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of R.61-79.261.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of R.61-79.261.147 are used.]

Alternative I

	1.	Amount of annual aggregate liability coverage to be demonstrated.		$
*	2.	Current assets.		$
*	3.	Current liabilities.		$
	4.	Net working capital (line 2 minus line 3).		$
*	5.	Tangible net worth.		$
*	6.	If less than 90% or assets are located in the U.S., given total U.S. assets.		$
			Yes	No
	7.	Is line 5 at least $10 million?		
	8.	Is line 4 at least 6 times line 1?		
	9.	Is line 5 at least 6 times line 1?		
*	10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.		
	11.	Is line 6 at least 6 times line 1?		

Alternative II

	1.	Amount of annual aggregate liability coverage to be demonstrated.		$
	2.	Current bond rating of most recent issuance and name of rating service.		
	3.	Date of issuance of bond.		
	4.	Date of maturity of bond.		
*	5.	Tangible net worth.		$
*	6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).		$
			Yes	No
	7.	Is line 5 at least $10 million?		
	8.	Is line 5 at least 6 times line 1?		
	9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.		

	10.	Is line 6 at least 6 times line 1?		

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under R.61-79.261.143(e) or closure or post-closure care costs under R.61-79.264.143, R.61-79.264.145, R.61-79.265.143 or R.61-79.265.145.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (e)(1)(i) of R.61-79. 261.143 and (f)(1)(i) of R.61-79. 261.147 are used. Fill in Alternative II if the criteria of paragraphs (e)(1)(ii) of R.61-79.261.143 and (f)(1)(ii) of R.61-79.261.147 are used.]

Alternative I

	1.	Sum of current cost estimates (total of all cost estimates listed above).		$
	2.	Amount of annual aggregate liability coverage to be demonstrated.		$
	3.	Sum of lines 1 and 2.		$
*	4.	Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6).		$
	5.	Tangible net worth.		$
*	6.	Net worth.		$
*	7.	Current assets.		$
*	8.	Current liabilities.		$
	9.	Net working capital (line 7 minus line 8).		$
*	10.	The sum of net income plus depreciation, depletion, and amortization.		$
*	11.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).		$
			Yes	No
	12.	Is line 5 at least $10 million?		
	13.	Is line 5 at least 6 times line 3?		
	14.	Is line 9 at least 6 times line 3?		
*	15.	Are at least 90% of assets located in the U.S.? If not, complete line 16.		
	16.	Is line 11 at least 6 times line 3?		
	17.	Is line 4 divided by line 6 less than 2.0?		
	18.	Is line 10 divided by line 4 greater than 0.1?		
	19.	Is line 7 divided by line 8 greater than 1.5?		

Alternative II

	1.	Sum of current cost estimates (total of all cost estimates listed above).	$
	2.	Amount of annual aggregate liability coverage to be demonstrated.	$
	3.	Sum of lines 1 and 2.	$
	4.	Current bond rating of most recent issuance and name of rating service.	
	5.	Date of issuance of bond.	
	6.	Date of maturity of bond.	
*	7.	Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line).	$

*	8.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).		$
			Yes	No
	9.	Is line 7 at least $10 million?		
	10.	Is line 7 at least 6 times line 3?		
*	11.	Are at least 90% of assets located in the U.S.? If not, complete line 12.		
	12.	Is line 8 at least 6 times line 3?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 261.151(f) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

261.151 APPENDIX G-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Corporate Guarantee for Facility Care

Guarantee made this _____ [date] by _____ [name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina, herein referred to as guarantor. This guarantee is made on behalf of the _____ [owner or operator] of _____ [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in R.61-79.264.141(h) and R.61-79.265.141(h)" to the Department.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in R.61-79.261.143(e).

2. _____ [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.

3. "Closure plans" as used below refer to the plans maintained as required by Subpart H of R.61-79 .261 for the care of facilities as identified above.

4. For value received from _____ [owner or operator], guarantor guarantees that in the event of a determination by the Department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under R.61-79.261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in R.61-79.264 or R.61-79.265, as applicable, or establish a

trust fund as specified in R.61-79.261.143(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of R.61-79.261, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of R.61-79. 264, R.61-79.265, or Subpart H of R.61-79. 261, as applicable, in the name of _____[owner or operator] unless _____ [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to R.61-79.264, R.61-79.265, or Subpart H of R.61-79. 261.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of R.61-79. 264 and R.61-79.265 or the financial assurance condition of R.61-79.261.4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate coverage complying with R.61-79.261.143.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor agrees that if_____[owner or operator] fails to provide alternate financial assurance as specified in R.61-79.264, R.61-79.265, or Subpart H of R.61-79.261, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of _____[owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of R.61-79.264, R.61-79.265, or Subpart H of R.61-79.261.

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-79.261.151(g)(1) as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

261.151 APPENDIX G-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Guarantee for Liability Coverage

Guarantee made this _____ [date] by _____[name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina], herein referred to as guarantor. This guarantee is made on behalf of _____ [owner or operator] of _____ [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in R.61-79 [either 264.141(h) or 265.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in R.61-79.261.147(g).

2. _____[Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate liability coverage as specified in R.61-79.261.147, as applicable, in the name of _____ [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless _____ [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by an Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in R.61-79.261.147 in the name of _____ [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by R.61-79.261.147, provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as _____ [owner or operator] must comply with the applicable requirements of R.61-79.261.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to _____ [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate liability coverage complying with R.61-79.261.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $.

[Signatures]

Principal _____

(Notary) Date _____

[Signatures]

Claimant(s) _____

(Notary) Date _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.
I hereby certify that the wording of the guarantee is identical to the wording specified in R.61-79.261.151(g)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

APPENDIX H

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under R.61-79.261.147. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental

occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in R.61-79.261.147(f).

(c) Whenever requested the Department, the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Department.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

Attached to and forming part of policy No. ____ issued by _____ [name of Insurer], herein called the Insurer, of _____ [address of Insurer] to _____ [name of insured] of _____ [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in R.61-79.261.151(h) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer] _____

[Type name] _____

[Title], Authorized Representative of [name of Insurer] _____

[Address of Representative] _____

APPENDIX I

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Hazardous Secondary Material Reclamation/Intermediate Facility Certificate of Liability Insurance

1. _____ [Name of Insurer], (the "Insurer"), of _____ [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to _____[name of insured], (the "insured"), of _____ [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under R.61-79.264, R.61-79.265, and the financial assurance condition of R.61-79.261.4(a)(24)(vi)(F). The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in R.61-79.261.147.

(c) Whenever requested by the Department, the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Department.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by Department.

I hereby certify that the wording of this instrument is identical to the wording specified in R.61-79.261.151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer] _____

[Type name] _____

[Title], Authorized Representative of [name of Insurer] _____

[Address of Representative] _____

APPENDIX J

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Irrevocable Standby Letter of Credit

Chief

Bureau of Land and Waste Management

2600 Bull Street

Columbia, SC 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to _____ [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of _____ [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of _____ [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of _____ [in words] U.S. dollars $____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____, and [insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of $[____]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Department, and owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in R.61-79.261.151(j) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] _____

[Date]. _____

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX K

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Payment Bond

Surety Bond No. [Insert number] _____

Parties [Insert name and address of owner or operator], Principal, incorporated in Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

	EPA Identification Number, name, and address for each facility guaranteed by this bond:	
	Sudden accidental occurrences	Nonsudden accidental occurrences
	Penal Sum Per Occurrence.	[insert amount] [insert amount]
	Annual Aggregate	[insert amount] [insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) SC Hazardous Waste Management Act 44-6 et. seq. and Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the Department of Health and Environmental Control, particularly R.61-79.264, R.61-79.265, and Subpart H of R.61-79.261 (if applicable).

(3) Rules and regulations of the governing State agency (if applicable) [insert citation].

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

(4) Personal property in the care, custody or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $[__].

[Signature] _____

Principal _____

[Notary] Date _____

[Signature(s)] _____

Claimant(s) _____

[Notary] Date _____

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert “primary” or “excess”] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Department, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R.61-79.261.151(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate Seal] _____

CORPORATE SURETY[IES]

[Name and address] _____

State of incorporation: _____

Liability Limit: $ _____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

APPENDIX L-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

BUREAU OF LAND AND WASTE MANAGEMENT

Trust Agreement

Trust Agreement, the "Agreement," entered into as of[date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department, an agency of the State of South Carolina Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and ___ [up to $2 million] annual aggregate for sudden accidental occurrences and ____ [up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility or group of facilities should be paid in the amount of $[___].

[Signatures]_____

Grantor _____

[Signatures] _____

Claimant(s) _____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in

carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-79.261.151(l) as such regulations were constituted on the date first above written.

[Signature of Grantor] _____

[Title]

Attest: _____

[Title]

[Seal]

[Signature of Trustee] _____

Attest: _____

[Title]

[Seal]

APPENDIX L-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Certification of Acknowledgement

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

[Signature of Notary Public] _____

APPENDIX M-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the South Carolina Department of Health and Environmental Control, "the Department," an agency of the State of South Carolina Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or

nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and ____[up to $2 million] annual aggregate for sudden accidental occurrences and ____[up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the

Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility should be paid in the amount of $[____]

[Signature]_____

Grantor_____

[Signatures]_____

Claimant(s)_____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 261.151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-79.261.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor] _____

[Title]

Attest: _____

[Title]

[Seal]

[Signature of Trustee] _____

Attest: _____

[Title]

[Seal]

APPENDIX M-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT

Certification of Acknowledgement

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

[Signature of Notary Public] _____

Revise 61-79.261 to add Subpart I to read:

SUBPART I
Use and Management of Containers

261.170 Applicability.

This subpart applies to hazardous secondary materials excluded under the remanufacturing exclusion at R.61-79.261.4(a)(27) and stored in containers.

261.171 Condition of containers.

If a container holding hazardous secondary material is not in good condition (*e.g.*, severe rusting, apparent structural defects) or if it begins to leak, the hazardous secondary material must be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of this part.

261.172 Compatibility of hazardous secondary materials with containers.

The container must be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

261.173 Management of containers.

(a) A container holding hazardous secondary material must always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

261.175 Containment.

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section.

(b) A containment system must be designed and operated as follows:

(1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system; and

(5) Spilled or leaked material and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

261.176 Special requirements for ignitable or reactive hazardous secondary material.

Containers holding ignitable or reactive hazardous secondary material must be located at least 15 meters (50 feet) from the facility's property line

261.177 Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same container.

(b) Hazardous secondary material must not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

261.179 Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Revise 61-79.261 to add Subpart J to read:

SUBPART J
Tank Systems

261.190 Applicability.

(a) The requirements of this subpart apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at R.61-79.261.4(a)(27).

(b) Tank systems, including sumps, as defined in R.61-79.260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in R.61-79.261.193(a).

261.191 Assessment of existing tank system's integrity.

(a) Tank systems must meet the secondary containment requirements of R.61-79.261.193, or the remanufacturer or other person that handles the hazardous secondary material must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, a written assessment reviewed and certified by a qualified Professional Engineer must be kept on file at the

remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the material(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.

Note to paragraph (b)(5)(ii): The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) If, as a result of the assessment conducted in accordance with paragraph (a) of this section, a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of R.61-79.261.196.

261.192 [Reserved]

261.193 Containment and detection of releases.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to paragraph (a): If the collected material is a hazardous waste under R.61-79.261, it is subject to management as a hazardous waste in accordance with all applicable requirements of R.61-79.262 through 265, 266, and 268. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended.

If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks must include one or more of the following devices:

(1) A liner (external to the tank);

(2) A vault; or

(3) A double-walled tank.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s) (*i.e.*, capable of preventing lateral as well as vertical migration of the material).

(2) Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

Note to paragraph (d)(3): The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) [Reserved]

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of paragraphs (a) and (b) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

261.194 General operating requirements.

(a) Hazardous secondary materials or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of R.61-79.261.196 of this subpart if a leak or spill occurs in the tank system.

261.195 [Reserved]

261.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material must satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of material from tank system or secondary containment system.

(1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material must, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Department within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of this paragraph if it is:

(i) Less than or equal to a quantity of 1 pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Department:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Department as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of paragraphs (e)(2) through (4) of this section, the tank system must cease to operate under the remanufacturing exclusion at R.61-79.261.4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of R.61-79.261.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with R.61-79.261.193 of this subpart prior to being returned to use.

(f) Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification must be kept on file at the facility and maintained until closure of the facility.

Note 1 to R.61-79.261.196: The Department may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to R.61-79.261.196: 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

261.197 Termination of remanufacturing exclusion.

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at R.61-79.261.4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under R.61-79 parts 261 through 266, 268, 270, 271, and 124, as applicable.

261.198 Special requirements for ignitable or reactive materials.

(a) Ignitable or reactive material must not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive must store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see R.61-79.260.11).

261.199 Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same tank system.

(b) Hazardous secondary material must not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

261.200 Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Revise 61-79.261 to add Subparts K-L and reserve:

SUBPARTS K-L
[Reserved]

Revise 61-79.261 to add Subpart M to read:

SUBPART M
Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

261.400 Applicability.

The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under R.61-79.261.4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d), that accumulates 6000 kg or less of hazardous secondary material at any time must comply with R.61-79.261.410 and R.61-79.261.411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) that accumulates more than 6000 kg of hazardous secondary material at any time must comply with R.61-79.261.410 and R.61-79.261.420.

261.410 Preparedness and prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material must be equipped with the following, *unless* none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b) of this section.

(2) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (b) of this section.

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities. (1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must document the refusal in the operating record

261.411 Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material.

A generator or an intermediate or reclamation facility operating under a verified recycler variance under 260.31(d) that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

(a) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d) of this section. This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident (e.g., spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

A generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

(a) Purpose and implementation of contingency plan. (1) Each generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan. (1) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under R.61-79.260.31(d) may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to R.61-79.262.410(f).

(4) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in paragraph (f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures. (1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (*e.g.*, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) He must immediately notify the Department (using its 24-hour number 803-253-6488) and the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident (*e.g.*, release, fire);

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with R.61-79.261.3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of R.61-79.262, R.61-79.263, and R.61-79.265.

(8) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Department. The report must include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident (*e.g.*, fire, explosion);

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

Revise 61-79.261 to add Subpart AA to read:

SUBPART AA
Air Emission Standards for Process Vents

261.1030 Applicability.

The regulations in this subpart apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at R.61-79.261.4(a)(27) with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

261.1031 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Resource Conservation and Recovery Act and parts 260-266.

"Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

"Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

"Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

"Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

"Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (*e.g.*, a primary condenser on a solvent recovery unit) is not a control device.

"Control device shutdown" means the cessation of operation of a control device for any purpose.

"Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

"Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

"Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

"Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

"Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

"First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

"Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

"Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

"Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

"In gas/vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

"In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

"In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

"In situ sampling systems" means nonextractive samplers or in-line samplers.

"In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

"Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

"Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

"Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

"Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

"Sampling connection system" means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

"Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

"Separator tank" means a device used for separation of two immiscible liquids.

"Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

"Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

"Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

"Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

"Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

"Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

"Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

261.1032 Standards: Process vents.

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-

film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of R.61-79.261.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of R.61-79.261.1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in R.61-79.261.1034(c) shall be used to resolve the disagreement.

261.1033 Standards: Closed-vent systems and control devices.

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) [Reserved]

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of R.61-79.261.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4)(ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[\sum_{i=1}^{n} C_i H_i \right]$$

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in R.61-79.260.11); and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in R.61-79.260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$Log_{10}(V_{max}) = (H_T + 28.8)/31.7$$

Where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_T)$$

Where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature

sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of R.61-79.261.1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of R.61-79.261.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of R.61-79.261.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in R.61-79.261.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in R.61-79.261.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in R.61-79.261.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Department, except as provided for in paragraph (o) of this section, using the procedures specified in R.61-79.261.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in R.61-79.261.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in R.61-79.261.1035 of this subpart.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (l)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in R.61-79.261.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under R.61-79 part 270 which implements the requirements of subpart X of this part; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of R.61-79 part 265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under R.61-79 part 270 which implements the requirements of subpart O of this part; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of R.61-79 part 265, subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under R.61-79 part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(o) Any components of a closed-vent system that are designated, as described in R.61-79.261.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

261.1034 Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedural requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in R.61-79.261.1033(l) of this subpart, the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in R.61-79 part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with R.61-79.261.1032(a) and with the total organic compound concentration limit of R.61-79.261.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416]\left[10^{-6}\right]$$

Where:

E_h= Total organic mass flow rate, kg/h;

Q_{2sd}= Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i= Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;
MW_i= Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h= Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_h)(H)$

Where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h, as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Department’s approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material must make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material must take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples must be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples must be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under 40 CFR 260.11) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic

concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

261.1035 Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must keep the following records on-site:

(1) For facilities that comply with the provisions of R.61-79.261.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in R.61-79.261.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (*i.e.*, the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous secondary material management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan must be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of

each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with R.61-79.261.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by R.61-79.261.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in R.61-79.260.11) or other engineering texts acceptable to the Department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in R.61-79.261.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of R.61-79.261.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of R.61-79.261.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with R.61-79.261.1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by R.61-79.261.1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with R.61-79.261.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with R.61-79.261.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with R.61-79.261.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with R.61-79.261.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in R.61-79.261.1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in R.61-79.261.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to R.61-79.261.1033(o) of this subpart shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of R.61-79.261.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in R.61-79.261.1033(l) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in R.61-79.261.1032 including supporting documentation as required by R.61-79.261.1034(d)(2) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

261.1036 – 261.1049 [Reserved].

Revise 61-79.261 to add Subpart BB to read:

SUBPART BB
Air Emission Standards for Equipment Leaks

261.1050 Applicability.

(a) The regulations in this subpart apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at R.61-79.261.4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

261.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in R.61-79.261.1031, the Resource Conservation and Recovery Act, and R.61-79 parts 260-266.

261.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in R.61-29.261.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in R.61-29.261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than five calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of R.61-29.261.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in R.61-29.261.1059.

(iii) A first attempt at repair (*e.g.*, relapping the seal) shall be made no later than five calendar days after each leak is detected.

(e) Any pump that is designated, as described in R.61-29.261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in R.61-29.261.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of R.61-29.261.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

261.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of R.61-79.261.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in R.61-79.261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of R.61-79.261.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in R.61-79.261.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in R.61-79.261.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Department.

261.1054 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in R.61-79.261.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in R.61-79.261.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in R.61-79.261.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in R.61-79.261.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

261.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of R.61-79.261.1084 through R.61-

79.264.1086 of this subpart or a control device that complies with the requirements of R.61-79.261.1060 of this subpart.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

261.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

261.1057 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in R.61-79.261.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section and R.61-79.261.1061 and R.61-79.261.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in R.61-79.261.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in R.61-79.261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream

.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in R.61-79.261.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(g) Any valve that is designated, as described in R.61-79.261.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in R.61-79.261.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before January 13, 2015.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

261.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in R.61-79.261.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in R.61-79.261.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under R.61-79.261.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of R.61-79.261.1064 of this subpart.

261.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with R.61-79.261.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

261.1060 Standards: Closed-vent systems and control devices.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to this subpart shall comply with the provisions of R.61-79.261.1033 of this part.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after July 13, 2015 and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of this subpart after January 13, 2015, due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (*i*.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

261.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of R.61-79.261.1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Department.

(2) If a valve leak is detected, it shall be repaired in accordance with R.61-79.261.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in R.61-79.261.1057 within the hazardous secondary material management unit shall be monitored within 1 week by the methods specified in R.61-79.261.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in R.61-79.261.1057 for which leaks are detected by the total number of valves subject to the requirements in R.61-79.261.1057 within the hazardous secondary material management unit.

261.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of R.61-79.261.1057 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in R.61-79.261.1057, except as described in paragraphs (b)(2) and (3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods (*i.e.*, monitor for leaks once every six months) for the valves subject to the requirements in R.61-79.261.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods (*i.e.*, monitor for leaks once every year) for the valves subject to the requirements in R.61-79.261.1057 of this subpart.

(4) If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in R.61-79.261.1057, but may again elect to use this section after meeting the requirements of R.61-79.261.1057(c)(1).

261.1063 Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in R.61-79.261.1052-261.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in R.61-79.261.1052(e), R.61-79.261.1053(i), R.61-79.261.1054, and R.61-79.261.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats the hazardous secondary material must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under R.61-79.260.11);

(2) Method 9060A (incorporated by reference under 40 CFR 260.11) of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (2) of this section.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under R.61-79.260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of R.61-79.261.1034(c)(1) through (4)

261.1064 Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material must record and keep the following information at the facility:

(1) For each piece of equipment to which subpart BB of part 261 applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous secondary material management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that comply with the provisions of R.61-79.261.1033(a)(2), an implementation schedule as specified in R.61-79.261.1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in R.61-79.261.1035(b)(3).

(4) Documentation of compliance with R.61-79.261.1060, including the detailed design documentation or performance test results specified in R.61-79.261.1035(b)(4).

(c) When each leak is detected as specified in R.61-79.261.1052, R.61-79.261.1053, R.61-79.261.1057, and R.61-79.261.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with R.61-79.261.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two successive months as specified in R.61-79.261.1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in R.61-79.261.1052, R.61-79.261.1053, R.61-79.261.1057, and R.61-79. 261.1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with R.61-79.261.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in R.61-79.261.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with R.61-79.261.1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material (or designate) whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of R.61-79.261.1060 shall be recorded and kept up-to-date at the facility as specified in R.61-79.261.1035(c). Design documentation is specified in R.61-79.261.1035(c)(1) and (2) and monitoring, operating, and inspection information in R.61-79.261.1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in R.61-79.261.1052 through R.61-79.261.1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of R.61-79.261.1052(e), R.61-79.261.1053(i), and R.61-79.261.1057(f).

(ii) The designation of this equipment as subject to the requirements of R.61-79.261.1052(e), R.61-79.261.1053(i), or R.61-79. 261.1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with R.61-79.261.1054(a).

(4)(i) The dates of each compliance test required in R.61-79.261.1052(e), R.61-79.261.1053(i), R.61-79.261.1054, and R.61-79.261.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of R.61-79.261.1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with R.61-79.261.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at in the facility:

(1) Criteria required in R.61-79.261.1052(d)(5)(ii) and R.61-79.261.1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in R.61-79.261.1052 through R.61-79.261.1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in R.61-79.261.1052 through R.61-79.261.1060. The record shall include supporting documentation as required by R.61-79.261.1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (*e.g.*, changing the process that produced the material) that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in R.61-79.261.1052 through R.61-79.261.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only three years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to R.61-79.261.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60,

part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

Section 261.1065-261.1079 [Reserved]

Revise 61-79.261 to add Subpart CC to read:

SUBPART CC
Air Emission Standards for Tanks and Containers

261.1080 Applicability.

(a) The regulations in this subpart apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at R.61-79.261.4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

(b) [Reserved]

261.1081 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given to them in the Resource Conservation and Recovery Act and parts 260 through 266 of this chapter.

"Average volatile organic concentration or average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of R.61-79.261.1084 of this subpart.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (*e.g.*, a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Empty hazardous secondary material container" means:

(1) A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, and no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

(2) A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

(3) A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

"External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

"Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

'Malfunction' means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Material determination" means performing all applicable procedures in accordance with the requirements of R.61-79.261.1084 of this subpart to determine whether a hazardous secondary material

meets standards specified in this subpart. Examples of a material determination include performing the procedures in accordance with the requirements of R.61-79.261.1084 of this subpart to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (*i.e.*, temperature, agitation, pH effects of combining materials, etc.) reasonably expected to occur in the tank. For the purpose of this subpart, maximum organic vapor pressure is determined using the procedures specified in R.61-79.261.1084(c) of this subpart.

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

"No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in R.61-79.261.1084(d) of this subpart.

"Point of material origination" means as follows:

(1) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under R.61-79.261.4(a)(27).

Note to paragraph (1) of the definition of Point of material origination*:* In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

(2) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

"Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and

prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

"Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

"Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

"Volatile organic concentration or VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of R.61-79.261.1084 of this subpart. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3) at 25 degrees Celsius must be included.

261.1082 Standards: General.

(a) This section applies to the management of hazardous secondary material in tanks and containers subject to this subpart.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in R.61-79.261.1084 through R.61-79.261.1087 of this subpart, as applicable to the hazardous secondary material management unit, except as provided for in paragraph (c) of this section.

(c) A tank or container is exempt from standards specified in R.61-79.261.1084 through R.61-79.261.1087 of this subpart, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in R.61-79.261.1083(a) of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

261.1083 Material determination procedures.

(a) Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of R.61-79.261.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in R.61-79.261.1084 through R.61-79.261.1087 of this subpart, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of R.61-79.261.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in R.61-79.261.1082 of this subpart.

(2) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination

(i) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of

acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. (A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with paragraphs (a)(3)(ii) and (iii) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

C = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination “i” of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination “i” as determined in accordance with the requirements of paragraph (a)(3)(iii) of this section (*i.e.* the average of the four or more samples specified in paragraph (a)(3)(ii)(B) of this section), ppmw.

(B) For the purpose of determining C_i, for individual material samples analyzed in accordance with paragraph (a)(3)(iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(1) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(2) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(4) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60,

appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Department and the remanufacturer or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Department may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section.

(b) [Reserved]

(c) Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in R.61-79.261.1084(c) of this subpart.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference—refer to R.61-79.260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92 (incorporated by reference—refer to R.61-79.260.11 of this chapter); and

(E) Any other method approved by the Department.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in R.61-79.261.1085(b)(1)(i) of this subpart for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60,

appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (*e.g.*, some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in paragraph (d)(9) of this section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

261.1084 Standards: tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which R.61-79.261.1082(b) of this subpart references the use of this section for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores

or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (4) of this section:

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in R.61-79.261.1083(c) of this subpart. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(1) and (2) of this section.

(1) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(2) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in R.61-79.261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section.

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in R.61-79.261.1089(b) of this subpart.

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in R.61-79.261.1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least seven calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in R.61-79.261.1089(b) of this subpart.

(4) Safety devices, as defined in R.61-79.261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in R.61-79. 261.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (B) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in R.61-79.261.1089(b) of this subpart.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in R.61-79.261.1089(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by Department at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least seven calendar days before refilling the tank.

(4) Safety devices, as defined in R.61-79.261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be

considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of R.61-79.261.1087 of this subpart.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in R.61-79.261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in R.61-79.261.1087 of this subpart.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the remanufacture or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in R.61-79.261.1089(b) of this subpart.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in R.61-79.261.1083(d) of this subpart.

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in R.61-79.261.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of R.61-79.261.1087 of this subpart.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in R.61-79.261.1087 of this subpart.

(3) Safety devices, as defined in R.61-79.261.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (2) of this section.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in R.61-79.261.1087 of this subpart.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in R.61-79.261.1082(c)(1) of this subpart at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in R.61-79.261.1082(c)(2) of this subpart.

(iii) The hazardous secondary material meets the requirements of R.61-79.261.1082(c)(4) of this subpart.

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

261.1085 [Reserved]

261.1086 Standards: containers.

(a) Applicability. The provisions of this section apply to the control of air pollutant emissions from containers for which R.61-79.261.1082(b) of this subpart references the use of this section for such air emission control.

(b) General requirements. (1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) [Reserved]

(c) Container Level 1 standards. (1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a

separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (*i.e.*, covers and closure devices on such a container are not required to be secured in the closed position).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the

person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in R.61-79.261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container) the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous secondary material in light material service.

(d) Container Level 2 standards. (1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in R.61-79.261.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacture or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in R.61-79.261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container), the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) Container Level 3 standards. (1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (ii) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria

for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of R.61-79.261.1087 of this subpart.

(3) Safety devices, as defined in R.61-79.261.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in R.61-79.261.1087 of this subpart.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in R.61-79.261.1089(d) of this subpart.

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in R.61-79.261.1083(d) of this subpart shall be used.

(1) Each potential leak interface (*i*.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

261.1087 Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in R.61-79.261.1033(k) of this part.

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that

stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in R.61-79.261.1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of R.61-79.261.1033(c) of this part; or

(iii) A flare designed and operated in accordance with the requirements of R.61-79.261.1033(d) of this part.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in R.61-79.261.1089(e)(1)(v) of this subpart.

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of R.61-79.261.1033(g) or (h) of this part.

(ii) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of R.61-79.261.1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of R.61-79.261.1033(j) of this part.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in R.61-79.261.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in R.61-79.261.1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in R.61-79.261.1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on a demonstration of control device performance using a design analysis

then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Department may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in R.61-79.261.1033(f)(2) and (l). The readings from each monitoring device required by R.61-79.261.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

261.1088 Inspection and monitoring requirements.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in R.61-79.261.1084 through R.61-79.261.1087 of this subpart.

(b) The remanufacture or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

261.1089 Recordkeeping requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in R.61-79.261.1084 through R.61-79.261.1087 of this subpart in accordance with the conditions specified in R.61-79.261.1080(b)(7) or (d) of this subpart, respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of R.61-79.261.1084 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of R.61-79.261.1084 of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by R.61-79.261.1084 of this subpart that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of R.61-79.261.1084 of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in R.61-79.261.1084(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of R.61-79.261.1084(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in R.61-79.261.1084(e) of this subpart shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in R.61-79.261.1084(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by R.61-79.261.1084(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in R.61-79.261.1084(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in R.61-79.261.1084(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) [Reserved]

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of R.61-79.261.1086 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of R.61-79.261.1087 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in R.61-79.261.1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with R.61-79.261.1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in R.61-79.261.1035(b)(3) and all test results.

(iv) Information as required by R.61-79.261.1035(c)(1) and R.61-79.261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of R.61-79.261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of R.61-79.261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in paragraphs (e)(1)(vi)(A) through (C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of R.61-79.261.1087(c)(1)(i), (ii), or (iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with R.61-79.261.1087(c)(3)(ii) of this subpart.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in R.61-79.261.1082(c)(1) or (c)(2)(i) through (vi) of this subpart, shall prepare and maintain at the facility records documenting the information used for each material determination (*e.g.*, test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of R.61-79.261.1083 of this subpart.

(2) [Reserved]

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to R.61-79.261.1084(l) or R.61-79.261.1085(g) of this subpart shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

Revise 61-79.270.42 Appendix I by adding entries 9 and 10 under section A. General Permit Provisions.

Appendix I to 270.42 - Classification of Permit Modification		
Modifications		Class
A.	General Permit Provisions	

	1.	Administrative and informational changes		1
	2.	Correction of typographical errors		1
	3.	Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)		1
	4.	Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:		
		a.	To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
		b.	Other changes.	2
	5.	Schedule of compliance:		
		a.	Changes in interim compliance dates, with prior approval of the Department.	[1]1
		b.	Extension of final compliance date.	3
	6.	Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Department.		[1]1
	7.	Changes in ownership or operational control of a facility, provided the procedures of 270.40(b) are followed.		[1]1
	8.	Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).		[1]1
	<u>9.</u>	<u>Changes to remove permit conditions applicable to a unit excluded under the provision of 261.4.</u>		<u>[1]1</u>
	<u>10.</u>	<u>Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of 261.4.</u>		<u>[1]1</u>
B.	General Facility Standards			
	1.	Changes to waste sampling or analysis methods:		
		a.	To conform with agency guidance or regulations.	1
		b.	To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.	1
		c.	To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes. (added 12/93)	[1]1
		d.	Other changes. (moved 12/93)	2
	2.	Changes to analytical quality assurance/control plan:		
		a.	To conform with agency guidance or regulations.	1
		b.	Other changes	2
	3.	Changes in procedures for maintaining the operating record.		[1]1
	4.	Changes in frequency or content of inspection schedules.		2
	5.	Changes in the training plan:		
		a.	That affect the type or decrease the amount of training given to employees.	2
		b.	Other changes.	1
	6.	Contingency plan:		
		a.	Changes in emergency procedures (i.e., spill or release response procedures).	2
		b.	Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
		c.	Removal of equipment from emergency equipment list.	2
		d.	Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1

	7.	Construction quality assurance plan: (added 12/93)		
		a.	Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
		b.	Other changes.	2
	Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.			
C.	Groundwater Protection			
	1.	Changes to wells:		
		a.	Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.	2
		b.	Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.	1
	2.	Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the Department.		[1]1
	3.	Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the Department.		[1]1
	4.	Changes in point of compliance.		2
	5.	Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):		
		a.	As specified in the groundwater protection standard.	3
		b.	As specified in the detection monitoring program.	2
	6.	Changes to a detection monitoring program as required by 264.98(h), unless otherwise specified in this appendix.		2
	7.	Compliance monitoring program:		
		a.	Addition of compliance monitoring program as required by 264.98(g)(4) and 264.99.	3
		b.	Changes to a compliance monitoring program as required by 264.99(j), unless otherwise specified in this appendix.	2
	8.	Corrective action program:		
		a.	Addition of a corrective action program as required by 264.99(h)(2) and 264.100.	3
		b.	Changes to a corrective action program as required by 264.100(h), unless otherwise specified in this Appendix.	2
D.	Closure.			
	1.	Changes to the closure plan:		
		a.	Changes in estimate of maximum extent of operations or maximum inventory of waste onsite at any time during the active life of the facility, with prior approval of the Department.	[1]1
		b.	Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Department.	[1]1
		c.	Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Department.	[1]1
		d.	Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Department.	[1]1
		e.	Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this	2

			appendix.	
		f.	Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 264.113(d) and (e).	2
	2.	Creation of a new landfill unit as part of closure.		3
	3.	Addition of the following new units to be used temporarily for closure activities:		
		a.	Surface impoundments.	3
		b.	Incinerators.	3
		c.	Waste piles that do not comply with 264.250(c).	3
		d.	Waste piles that comply with 264.250(c).	2
		e.	Tanks or containers (other than specified below).	2
		f.	Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Department.	[1]1
		g.	Staging piles	2
E.	Postclosure			
	1.	Changes in name, address, or phone number of contact in postclosure plan.		1
	2.	Extension of postclosure care period.		2
	3.	Reduction in the postclosure care period.		3
	4.	Changes to the expected year of final closure, where other permit conditions are not changed.		1
	5.	Changes in postclosure plan necessitated by events occurring during the active life of the facility, including partial and final closure.		2
F.	Containers			
	1.	Modification or addition of container units:		
		a.	Resulting in an increase in the facility's container storage capacity.	3
		b.	Not resulting in an increase in the facility's container storage capacity.	2
	2:			
		a.	Modification of a container unit without increasing the capacity of the unit.	2
		b.	Addition of a roof to a container unit without alteration of the containment system.	[1]1
	3.	Storage of different wastes in containers:		
		a.	That require additional or different management practices from those authorized in the permit.	3
		b.	That do not require additional or different management practices from those authorized in the permit.	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
G.	Tanks			
	1:			
		a.	Modification or addition of tank units resulting in an increase in the facility's tank capacity.	3
		b.	Modification or addition of tank units not resulting in an increase in the facility's tank capacity.	2
		c.	Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	3
		d.	After prior approval of the Department, addition of a new tank that will	3

			operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	
	2.	Modification of a tank unit or secondary containment system without increasing the capacity of the unit.		2
	3.	Replacement of a tank with a tank that meets the same design standards and has a capacity less than or equal to the capacity of the replaced tank provided.		[1]1
		- The capacity difference is no more than 1500 gallons,		
		- The replacement tank meets the same conditions in the permit.		
	4.	Modification of a tank management practice.		2
	5.	Management of different wastes in tanks:		
		a.	That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from the authorized in the permit.	3
		b.	That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit.	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
H.	Surface Impoundments			
	1.	Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.		3
	2.	Replacement of a surface impoundment unit.		3
	3.	Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.		2
	4.	Modification of a surface impoundment management practice.		2
	5.	Treatment, storage, or disposal of different wastes in surface impoundments:		
		a.	That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
		b.	That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
	6.	Modifications of unconstructed units to comply with 264.221(c), 264.222, 264.223, and 264.226(d). (added 12/93)		[1]1
	7.	Changes in response action plan: (added 12/93)		
		a.	Increase in action leakage rate.	3
		b.	Change in a specific response reducing its frequency or effectiveness.	3
		c.	Other changes.	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
I.	Enclosed Waste Piles. For all waste piles except those complying with 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 264.250(c).			
	1.	Modification or addition of waste pile units:		
		a.	Resulting in an increase in the facility's waste pile storage or treatment capacity.	3
		b.	Not resulting in an increase in the facility's waste pile storage or treatment capacity.	2
	2.	Modification of waste pile unit without increasing the capacity of the unit.		2

	3.		Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	[1]1
	4.		Modification of a waste pile management practice.	2
	5.		Storage or treatment of different wastes in waste piles:	
		a.	That require additional or different management practices or different design of the unit.	3
		b.	That do not require additional or different management practices or different design of the unit.	2
	6.		Conversion of an enclosed waste pile to a containment building unit. (added 12/93)	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
J.	Landfills and Unenclosed Waste Piles			
	1.		Modification or addition of landfill units that result in increasing the facility's disposal capacity.	3
	2.		Replacement of a landfill.	3
	3.		Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	3
	4.		Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	2
	5.		Modification of a landfill management practice.	2
	6.		Landfill different wastes:	
		a.	That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	3
		b.	That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	2
	7.		Modifications of unconstructed units to comply with 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 364.304. (added 12/93)	[1]1
	8.		Changes in response action plan: (added 12/93)	
		a.	Increase in action leakage rate.	3
		b.	Change in a specific response reducing its frequency or effectiveness.	3
		c.	Other changes.	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
K.	Land Treatment			
	1.		Lateral expansion of or other modification of a land treatment unit to increase areal extent.	3
	2.		Modification of run-on control system.	2
	3.		Modify run-off control system.	3
	4.		Other modifications of land treatment unit component specifications or standards required in permit.	2
	5.		Management of different wastes in land treatment units:	
		a.	That require a change in permit operating conditions or unit design specifications.	3
		b.	That do not require a change in permit operating conditions or unit design specifications.	2

	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
	6.	Modification of a land treatment unit management practice to:		
		a.	Increase rate or change method of waste application.	3
		b.	Decrease rate of waste application.	1
	7.	Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.		2
	8.	Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.		3
	9.	Modification of operating practice due to detection of releases from the land treatment unit pursuant to 264.278(g)(2).		3
	10.	Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.		3
	11.	Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.		2
	12.	Changes in background values for hazardous constituents in soil and soil-pore liquid.		2
	13.	Changes in sampling, analysis, or statistical procedure.		2
	14.	Changes in land treatment demonstration program prior to or during the demonstration.		2
	15.	Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Department's prior approval has been received.		[1]1
	16.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Department.		[1]1
	17.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.		3
	18.	Changes in vegetative cover requirements for closure.		2
L.	Incinerators, Boilers, and Industrial Furnaces:			
	1.	Changes to increase any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.		3
	2.	[Reserved]		
	3.	Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by		3

		adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl2, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.		
	4.	Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Department may require a new trial burn to demonstrate compliance with the regulatory performance standards.		2
	5.	Operating requirements:		
		a.	Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
		b.	Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3
		c.	Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
	6.	Burning different wastes:		
		a.	If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
		b.	If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
	Note: See 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.			
	7.	Shakedown and trial burn:		
		a.	Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	2
		b.	Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Department.	[1]1
		c.	Changes in the operating requirements set in the permit for conducting a	[1]1

			trial burn, provided the change is minor and has received the prior approval of the Department.	
		d.	Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Department.	[1]1
	8.	Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit. (revised 12/93)1		1
	9.	Technology changes needed to meet standards under 40 CFR part 63 (Subpart EEE-Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of 270.42(j) are followed.		
	10.	Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Section 270.42(k) are followed.		[2]1
M.	Containment Buildings: (added 12/93)			
	1.	Modification or addition of containment building units:		
		a.	Resulting in an increase in the facility's containment building storage or treatment capacity.	3
		b.	Not resulting in an increase in the facility's containment building storage or treatment capacity.	2
	2.	Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.		2
	3.	Replacement of a containment building with a containment building that meets the same design standards provided:		
		a.	The unit capacity is not increased.	[1]1
		b.	The replacement containment building meets the same conditions in the permit.	[1]1
	4.	Modification of a containment building management practice.		2
	5.	Storage or treatment of different wastes in containment buildings:		
		a.	That require additional or different management practices.	3
		b.	That did not require additional or different management practices.	2
N.	Corrective Action:			
	1.	Approval of a corrective action management unit pursuant to 264.552.		3
	2.	Approval of a temporary unit or time extension for a temporary unit pursuant to 264.553.		2
	3.	Approval of a staging pile or staging pile operating term extension pursuant to 264.554		2
O.	Burden Reduction			
	1.	[removed by State Register Volume No. 36, Issue No. 3, eff March 23, 2012]		
	2.	Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to 264.52(b)		1
	3.	Changes to recordkeeping and reporting requirements pursuant to: 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5)		1
	4.	Changes to inspection frequency for tank systems pursuant to 264.195(b)		1
	5.	Changes to detection and compliance monitoring program pursuant to 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g)		1

ATTACHMENT D
Summary of Public Comments
State Register Document No. 4646
Proposed Amendment to R. 61-79, Hazardous Waste Management Regulations
May 12, 2016

APRIL 25, 2016

Mr. David Scaturo
South Carolina Bureau of Land and Waste Management
South Carolina Department of Health & Environmental Control 2600 Bull Street
Columbia, SC 29201

Re: Encouraging Adoption of the U.S. Environmental Protection Agency's Definition of Solid Waste

Dear Mr. Scaturo:

We write to encourage adoption in South Carolina of the new Definition of Solid Waste, 80 Fed. Reg.1,694 (Jan. 13, 2015), for hazardous waste regulation under the Resource Conservation and Recovery Act ("RCRA"), promulgated by the U.S. Environmental Protection Agency ("EPA") and effective as of July 13, 2015. The revised definition introduces changes to several recycling-related provisions that promote safe hazardous secondary materials recycling and enables industries like ours-the electric arc furnace steel manufacturing industry-to operate responsibly and profitably. This provides jobs to South Carolina residents and brings business into the area. Because individual states must formally adopt portions of EPA's definition, we encourage quick adoption of the entire rule, including the new recycling exclusions.

I. About the Company

CMC Steel is the domestic steelmaking segment of Commercial Metals Company, comprising four steel minimills and one technologically advanced micro mill strategically located throughout the U.S. to serve our broad range of customers. Our products are used in a diverse blend of markets including infrastructure, heavy and light commercial, agriculture, energy, machinery, industrial, mining, shipbuilding, railcar, river barge, and residential markets.

11. About the Resource Conservation and Recovery Act and the Definition of Solid Waste

RCRA governs the generation, treatment, storage, and disposal of hazardous waste under its Subtitle C provisions. However, a material must first be a solid waste before it can be regulated as a

hazardous waste. Therefore, the definition of "solid waste" is critical to understanding what products and processes are governed by RCRA. Traditionally EPA has created a number of exemptions from this definition that allow the beneficial use of byproducts and other secondary materials. Most critical to our industry is how EPA allows recycling of metal-bearing "Hazardous Secondary Materials" ("HSM"). EPA has wrestled with the task of properly defining "solid waste" and regulating HSM recycJing for nearly thirty years.

The 2015 definition of "solid waste" includes a number of provisions to ensure environmentally sound recycling of HSM materials, and we write to encourage South Carolina to amend the appropriate regulations to integrate the new exemptions.

III. Revisions that South Carolina should adopt in its Solid Waste Disposal Regulations

We are concerned that two elements of the 2015 definition of solid waste be reflected in state regulation. These are: (1) an exclusion for HSM legitimately reclaimed under the control of the generator; and (2) an exclusion for HSM sent for reclamation to a verified recycler. We ask that you ensure these exclusions are included in South Carolina solid waste regulations.

A. *Exclusion for Reclamation Under the Control of the Generator*

The exclusion fur HSM legitimately reclaimed under the control of the generator was first introduced in 2008 and continues to be supported by EPA. The exclusion contains a number of conditions intended to insure that the HSM are not "discarded!' These provisions include a new definition fur the term "contained." Recordkeeping, notification, and emergency preparedness and response requirements further contribute toward this goal.

B. *Exclusion/or Verified Recyclers*

The 2015 definition of solid waste replaced the 2008 transfer-based exclusion with a verified recycler exclusion, which allows RCRA-permitted facilities and those obtaining a solid waste variance from EPA to receive HSM for recycling. Facilities that obtain a verified recycler variance must meet standards relating to operation, financing, compliance, and training. Additionally, generators and reclaimers must keep records of shipments and meet emergency preparation and response requirements. The verified recycler exclusion creates a network ofreclaimers that have been vetted by EPA or states and can easily be utilized by generators. The exclusion also establishes recordkeeping and tracking requirements that help further the safe re-use of HSM.

lV. The Value of the Steel Industry in South Carolina

The CMC Steel SC employs 350 people and generates millions of dollars in revenue for the community.

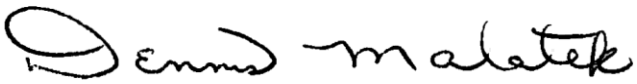
Recycled scrap metal constitutes over 90 percent of the material input of electric arc furnace steel producers, and steel production from melted scrap requires less energy than the production of steel from iron ore. Last year, the U.S. steel industry recycled roughly 70 million tons of ferrous scrap metal, with approximately 80% of that consumed in electric arc furnace mills. The recycling of scrap steel plays an important role in the conservation of energy, because steel produced from

melted scrap requires less energy than the production of steel from iron ore. Additionally, the recycling of steel scrap reduces the burden on landfill disposal facilities, and prevents the accumulation of abandoned steel products.

Reduced regulation and sensible exclusions for useful and effective HSM recycling efforts help the steel industry operate profitably and successfully. We encourage prompt adoption of the changes and definitions included in EPA's new definition of "solid waste."

CMC appreciates the opportunity to provide these comments and look forward to your thoughtful consideration.

Sincerely,



Dennis Malatek
Director of Operations

ATTACHMENT E
Excerpt from *State Register*
Notice of Proposed Regulation for
Regulation 61-79, Hazardous Waste Management Regulations
Published in the State Register Volume 40 Issue 6 on June 24, 2016

Document No. 4651
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-56-10 et seq.

61-79. Hazardous Waste Management Regulations

Preamble:

The Department of Health and Environmental Control (Department) is proposing to amend R.61-79, Hazardous Waste Management Regulations, to adopt two final rules published in the Federal Register by the United States Environmental Protection Agency (EPA). The proposed amendments will support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments will: revise the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions; and revise several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act. See the Section-by-Section Discussion of Proposed Amendments below and the Statements of Need and Reasonableness and Rationale herein.

A Notice of Drafting for these proposed amendments was published in the State Register on November 27, 2015.

Section-by-Section Discussion of Proposed Amendments:

1. The Department is proposing to amend R.61-79 to adopt the "Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities," published on January 3, 2014 at 79 FR 350- 364:

260.10 Definitions. Add, in alphabetical order, the following new definition: "Carbon dioxide stream."

261.4(h). Add new subsection (h) by adding language that describes how carbon dioxide (CO2) streams that are to be injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration are excluded from the definition of hazardous waste provided that they comply with applicable Department of Transportation requirements for transportation of the CO2 streams, applicable UIC Class VI wells requirements, no other hazardous wastes are mixed with or otherwise co-injected with the CO2 stream, and generators and UIC Class VI well owners or operators claiming the exclusions must sign a certification statement that the conditions of the exclusion were met. This subsection also adds language that describes the length of time the certification must be kept on site and to whom and how it must be made available.

2. The Department is proposing to amend R.61-79 to adopt "Revisions to the Definition of Solid Waste," published on January 13, 2015 at 80 FR 1694-1814.

Checklist D2 – Definition of Solid Waste exclusions and non-waste determinations

260.10 Definitions. Add, in alphabetical order, the following new definitions: "Hazardous secondary material generator;" "Intermediate facility;" "Land-based unit."

ATTACHMENT F
Notice of Drafting
Published in the State Register Volume 39 Issue 11 on November 27, 2015

22 DRAFTING NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-56-10 et seq.

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) proposes to amend R.61-79, Hazardous Waste Management Regulations. Interested persons are invited to present their views in writing to David Scaturo, Director of the Division of Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by email at scaturdm@dhec.sc.gov. To be considered, comments must be received no later than December 29, 2015, the close of the drafting comment period.

Synopsis:

The Department proposes amending R.61-79 to adopt two final rules published in the Federal Register by the United States Environmental Protection Agency (EPA). The Department's adoption of these rules is not required by federal law. The two final rules are summarized below.

1. The Department proposes adopting the "Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities," published on January 3, 2014 at 79 FR 350-364. The rule revises the definition of solid waste to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration (GS), and meet certain other conditions. This rule is considered to be less stringent than the current federal requirements.

2. The Department proposes adopting the "Revisions to the Definition of Solid Waste," published on January 13, 2015 at 80 FR 1694-1814. The rule revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. The sections of the rule that cover Definition of Solid Waste exclusions and non-waste determinations, including provisions from the 2008 Definition of Solid Waste Rule and revisions from the 2015 Definition of Solid Waste final rule and a remanufacturing exclusion, are considered to be less stringent than the current federal requirements.

The Department may also make stylistic changes for internal consistency, clarification in wording, corrections of references, grammatical errors, outlining/codification, and such other changes as may be necessary to improve the overall quality of the regulation.

Legislative review is required.

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
SUMMARY SHEET

September 8, 2016

(X) ACTION/DECISION
( ) INFORMATION

I. TITLE: Proposed Amendment of:
R. 61-47, *Shellfish*

Legislative Review is Required

II SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulation in the *State Register* to Provide Opportunity for Public Comment

III. FACTS:

1.Pursuant to S.C. Code Section 44-1-140, the Department of Health and Environmental Control (Department) is authorized to promulgate and enforce rules and regulations for public health for the classification of waters and for the safety and sanitation in the harvesting, storing, processing, handling and transportation of mollusks, fin fish and crustaceans. Regulation 61-47, Shellfish prescribes requirements for producers, processors, harvesters, and transporters of molluscan shellfish and is intended to protect the health of consumers of molluscan shellfish.

2.The Department is proposing to amend R.61-47, Shellfish, to provide further clarification and specific technical requirements regarding the harvesting and handling of molluscan shellfish during the warmer months of the year (*i.e.*, months that require additional temperature controls). The amendments will allow for the harvest of molluscan shellfish during months that require additional temperature controls in a manner that is consistent with national shellfish sanitation program and protects the health of the consumers of molluscan shellfish. The amendment will include a requirement for certified shippers to only accept shellfish from harvesters that have received annual training for the safe and sanitary harvesting and handling of shellfish. The amendment will update the reference date for the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish from 2013 to 2015 (the latest version of the document). The amendment will include stylistic changes to correct for spelling, clarity, readability, grammar, and codification for overall improvement of the text of the regulation.

3. A Statement of Need and Reasonableness is submitted as Attachment A. A Table of Proposed Revisions and Text are submitted as Attachments B and C.

4. The Department initiated the statutory process for amendment of R.61-47 by publication of a Notice of Drafting in the State Register on May 27, 2016. In addition, two stakeholders meetings were held regarding the proposed amendments to the regulation. One stakeholders meeting was held in Charleston on July 14, 2016 and the other stakeholders meeting was held in Beaufort on July 20, 2016. Public comments were received on the Notice of Drafting and via the stakeholders meetings. The public comments were considered during the drafting of the proposed amendments to the regulation.

5. The proposed regulation completed Department internal review as required by agency policy.

6. Department staff request the Board to grant initial approval to publish a Notice of Proposed Regulation for the amendment of R.61-47 in the *State Register* for public comment. If approved, a Notice of

Proposed Regulation will be published in the *State Register* on September 23, 2016 and a public hearing will be scheduled before the Board on December 8, 2016. A copy of the draft Notice of Proposed Regulation is submitted as Attachment D.

IV. **ANALYSIS:**

1. The regulation was lasted updated in 2015.

2. The current regulation needs additional clarification and technical requirements to address the harvesting and handling of molluscan shellfish during the warmer months of the year (i.e., months that require additional temperature controls). The current regulation does contain requirements for the harvesting and handling of shellfish during these warmer months. However, these requirements are only adequate to address the harvesting and handling of clams during the warmer months, not other shellfish such as oysters. For biological reasons, clams require less stringent controls during the warmer months than other shellfish, such as oysters. The regulation will be amended to provide the specific requirements for harvesting different types of shellfish during the warmer months to protect the shellfish consumer.

3. Amending the regulation to allow the warm weather ("summer") harvest of oysters will provide the SC shellfish industry the opportunity to harvest and sell maricultured oysters during months of the year when, historically, SC oysters have not been available for sale. Oysters currently are available for purchase during the summer in SC and other states. These oysters are obtained from other states that allow the summer harvest of oysters. Most other states that produce oysters allow the summer harvest of oysters for sale and consumption. Oysters harvested during summer months in other states are harvested and handled under more restrictive conditions than oysters harvest during non-summer months to protect the public that consume summer oysters.

4. Naturally occurring harmful bacteria, such as Vibro bacteria, occur at higher levels in shellfish during the warmer months due to the higher water and air temperatures. Vibro bacteria can cause severe illness or death if consumed by an individuals with a compromised immune system. For this reason, it is important to reduce the amount of time shellfish are exposed to the higher temperatures and to rapidly reduce the internal temperature of shellfish post-harvest via refrigeration or icing. During months that do not require additional temperature controls, the time from harvest to refrigeration is 18 hours as currently required by the regulation. During the warmer months that do require additional temperature controls, clams must be refrigerated within 12 hours of being harvested as currently required by regulation. The current regulation also allows longer than 12 hours for clams if a certified shipper has a Department approved tempering plan to reduce the potential for clam mortality due to rapid cooling.

5. For oysters harvested during months that require additional temperature controls, it is proposed that only maricultured oysters that have been continuously submerged more than 14 days be harvested for sale and consumption. Oysters that are submerged are not exposed to the higher temperatures experienced by oysters that are exposed to the warm air and sunlight during daily tidal cycles. Two options for the harvesting and handling oysters during the warmer months are proposed as follows: 1) oysters must be delivered to the certified shippers facility by no later than ten (10) a.m. the day of harvest and the internal temperature of the shellfish reduced to 50 degrees Fahrenheit or lower within two (2) hour of receipt by the certified shipper; or 2) oysters delivered after ten (10) a.m the day of harvest must be cooled immediately after harvest with ice or by mechanical refrigeration and remain continuously cooled with ice or refrigeration until being delivered to the certified shipper within four (4) hours from the start of harvest. The aforementioned harvesting and handling methods proposed for oysters are based on the following: the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish that is administered by the U.S. Food and Drug Administration (FDA), the Vibro bacteria risk calculator

provided by FDA, requirements used by other states for months that require additional temperature controls, and consultation with FDA Shellfish Specialists.

6. The regulation will be amended to clarify that the warmer months requiring additional temperature controls will be defined in the document entitled, "South Carolina Vibro Control Plan". This document is published annually and uses average monthly air and water temperatures from prior years to determine which months of the year should have additional temperature controls. The state must have a Vibro control plan to be in compliance with the requirements of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

7. To facilitate the successful implementation of the harvesting and handling requirements in the regulation, especially for the warmer months of the year, it is proposed that certified shippers only accept shellfish from harvesters that can demonstrate that they have completed annual training on key regulatory requirements and safe and sanitary practices related to the harvesting and handling of shellfish in South Carolina. The Department will coordinate the annual training with the SC Department of Natural Resources (DNR). DNR issues shellfish harvesting permits to harvesters on an annual basis. It is anticipated that the required training and documentation of the training will be provided each year when harvesters obtain their harvesting permit from DNR. The training will be provided at no cost to the harvester.

8. The regulation will be amended to update the reference date for the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish from the 2013 version to the 2015 version (the latest version of the document).

9. A Statement of Need and Reasonableness and Rationale for the proposed amendment is submitted as Attachment A.

V. RECOMMENDATION:

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation for amendment of R.61-47 in the *State Register* to provide an opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted By:

David G. Baize
Chief, Bureau of Water
Environmental Affairs

Approved By

Myra C. Reece
Director of Environmental Affairs

Attachments:
A. Statement of Need and Reasonableness
B. Table of Revisions
C. Text of Proposed Revision
D. Draft State Register Notice of Proposed Regulation
E. State Register Notice of Drafting published May 27, 2016

ATTACHMENT A
STATEMENT OF NEED AND REASONABLENESS
PROPOSED AMENDMENT OF R.61-47, SHELLFISH
September 8, 2016

Statement of Need and Reasonableness:

The following is based on an analysis of the factors listed in 1976 Code Section 1-23-115(C)(1)-(3) and (9) through (11):

DESCRIPTION OF REGULATION

Purpose: The Department proposes to amend R. 61-47 to provide further clarification and specific technical requirements regarding the harvesting and handling of molluscan shellfish during the warmer months of the year (*i.e.,* months that require additional temperature controls). The amendments will allow for the harvest of molluscan shellfish during months that require additional temperature controls in a manner that is consistent with national shellfish sanitation program and protects the health of the consumers of molluscan shellfish. The amendment will include a requirement for certified shippers to only accept shellfish from harvesters that have received annual training on key regulatory requirements and safe and sanitary practices related to the harvesting and handling of shellfish in South Carolina. The amendment will update the reference date for the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish from 2013 to 2015 (the latest version of the document). The amendment will include stylistic changes to correct for spelling, clarity, readability, grammar, and codification for overall improvement of the text of the regulation.

Legal Authority: 1976 Code Section 44-1-140

Plan for Implementation:

Upon approval by the General Assembly and publication in the State Register as final regulations, a copy of R.61-47, to include these amendments, will be available electronically on the Department's internet site at http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/Water/ under the Water category and subsequently in the Code of Regulations of the S.C. Code of Regulations. Printed copies will be available for a fee from the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION AND EXPECTED BENEFITS:

The proposed amendments are needed and reasonable because they will allow the South Carolina shellfish industry to expand their markets through the sale of maricultured oysters harvested during the warmer months of the year in a manner that is consistent with the national shellfish sanitation program and protects the health of the consumers of molluscan shellfish. Historically, South Carolina oysters have not been available for sale during the warmer (summer) months of the year. Oysters currently are available for purchase during the summer in South Carolina and other states. These oysters are obtained from other states that allow the summer harvest of oysters. Most other states that produce oysters allow the summer harvest of oysters for sale and consumption. Oysters harvested during summer months in other states are harvested and handled under more restrictive conditions than oysters harvested during non-summer months to protect the consumers of summer oysters. The proposed amendments will include more restrictive harvesting and handling requirements for the summer months to protect public health.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of these amendments may require additional resources to support the increased number of field and facility compliance inspections needed to monitor the increased shellfish harvesting and sales during the warmer months of the year. For example, inspections will be needed to ensure maricultured shellfish are brought under temperature control in accordance with the regulation to protect public health. The resource demands on the Department and State government will depend on how much the shellfish industry grows and harvesting activities increase during the warmer months of the year in response to the additional business opportunities created by these amendments.

External Costs: There will be external costs for implementing the amendments to this regulation. The external costs will be incurred by shellfish harvesters and certified shippers that decide to expand their operations to participate in the harvesting, handling or sale of shellfish, especially maricultured oysters, during the warmer months of the year. However, these costs will be offset by the below External Benefits.

External Benefits: The amendments will provide the South Carolina shellfish industry the opportunity to sell South Carolina maricultured oysters during months of year when, historically, South Carolina oysters have not been available for sale.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There is no anticipated detrimental effect on the environment.

The amendments can effect public health by allowing the public to consume South Carolina maricultured oysters that have been harvested during the warmer months of the years. Naturally occurring harmful bacteria, such as Vibro bacteria, occur at higher levels in shellfish during the warmer months due to the higher water and air temperatures. Vibro bacteria can cause severe illness or death if consumed by individuals with compromised immune systems. The amendments include more restrictive harvesting and handling requirements for Shellfish during the warmer months of the year to mitigate the increased risk posed by harmful bacteria, especially Vibro bacteria, during those months.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment.

If the amendments are not implemented, there will be no detrimental effect on public health because molluscan shellfish harvesting and sales during the warmer months would remain limited to only clams as is currently the case in South Carolina.

<u>STATEMENT OF RATIONALE</u>

The Department is amending this regulation to provide further clarification and specific technical requirements regarding the harvesting and handling of molluscan shellfish during the warmer months of the year (i.e., months that need additional temperature controls). These amendments will allow the South

Carolina shellfish industry to expand their markets through the sale of maricultured oysters harvested during these warmer months of the year in a manner that is consistent with national shellfish sanitation program and protects the health of the consumers of molluscan shellfish.

ATTACHMENT B
TABLE OF REVISIONS
PROPOSED AMENDMENT OF R.61-47, SHELLFISH
September 8, 2016

Section-by-Section Discussion of Proposed Regulations

61-47.A.2(ll).
The amendment is to change the reference date of the document to the latest version of the document.

61-47.C.1(f)
This amendment is added to require harvesters to have Department approved annual training and certified shippers to only receive shellfish from harvesters that have completed Department approved annual training. The annual training for harvesters will include a discussion of state regulations and overview of best practices for the safe and sanitary harvesting and handling of shellfish. The training is needed given the more stringent harvesting and handling requirements on the harvester during the warmer months of the year. The training will be provided at no cost to the harvesters.

61-47.C.2.(b)
Two subsections (61-71.C.2.(b) and (c)) are combined to create this new subsection. This amendment is to improve readability and to more clearly explain the meaning of shellstock temperature control and how and when shellstock temperature control is to be applied by certified shippers.

61-47.C.2.(c)
This subsection includes the same text found in the first sentence in the current subsection 61-47.C.2.(c)(1).

61-47.C.2.(d)
This subsection is added to clarify that the months that require additional temperature controls will be determined annually and presented in the South Carolina Vibro Control Plan. This plan uses existing data, such as air and water temperatures, to develop the procedures that South Carolina will follow to reduce the health risk posed by Vibro bacteria to the consumers of shellfish harvested in the state. The plan is a requirement for South Carolina to remain in compliance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

61-47.C.2.(e)
This text is new and clarifies that only maricultured shellfish and clams of the species *Mercenaria mercenaria*, unless other clam species are approved by Department, can be harvested in the state during months that require additional temperature controls.

61-47.C.2.(e)(1)
This subsection includes similar text to the text found in the second and third sentences of the current item 61-47.C.2.(c)(1) and describes the temperature control requirements for clams during months that require additional temperature controls. Text is added to clarify that clams in this subsection means clams of the species Mercenaria mercenaria. This is the only clam species commercially harvested in the state and is specifically required to have controls for Vibro bacteria by the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. The text does allow the Department to consider other clam species under this subsection.

61-47.C.2.(e)(2)
This subsection is new text and includes technical requirements for the harvesting and handling of maricultured oysters during months that require additional temperature controls. These harvesting and handling requirements are based on the following: the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish that is administered by the U.S. Food and Drug Administration (FDA), the Vibro bacteria risk calculator provided by FDA, requirements used by other states for months that require additional temperature controls, and consultation with FDA Shellfish Specialists.

61-47.C.2.(e)(3)
This subsection is new text and allows other maricultured shellfish to be harvested during months that require additional temperature controls in the same manner as maricultured oysters as described in item 61-47.C.2.(e)(2). The subsection does allow other requirements to be used if approved by the Department.

61-47.C.2.(f)
This is a new subsection with a new heading to clarify the contents of this subsection.

61-47.C.2.(f)(1) and (2)
These subsections include text found in the current regulation under items 61-47.C.2.(c)(2) and (3). These items are moved to this subsection to provide clarity about the purpose of the items and to accommodate new subsection that have been added.

61-47.C.2.(g)
Subsection renumbered and subsection cross reference renumbered to match amended text.

61-47.C.2.(h)
Subsection renumbered.

61-47.C.2.(i)
Subsection renumbered.

61-47.C.2.3(c)(b)(4)
Subsection cross reference added to include newly added text.

61-47.I.4
Wording change to be consistent with wording of amended text in C.2.(b).

61-47.I.5
Subsection cross reference added to include newly added text and renumbered subsection.

61-47.I.6
Subsection cross reference renumbered to match amended text.

61-47.I.7
Subsection cross reference renumbered to match amended text.

61-47.O.6.(a)
Text is added to clarify that the required operation plan should include the operational requirements found in 61-47.C.2.(e)(2).

61-47.O.6.(e)
Change punctuation.

61-47.O.6.(f)
This subsection is added to require the operational plan to include the record keeping procedures that will be used to document compliance with the requirements found in item C.2.(e)(2).

ATTACHMENT C
TEXT OF PROPOSED REVISION
PROPOSED AMENDMENT OF R.61-47, SHELLFISH
September 8, 2016

~~Indicates Matter Stricken~~
Indicates New Matter

Text:

Revise 61-47.A.2(ll) to read:

(ll) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish means the ~~2013~~2015version of the United States Food and Drug Administration document with that title that consists of a Model Ordinance, supporting guidance documents, recommended forms, and other related materials associated with the National Shellfish Sanitation Program. Portions of the document are incorporated by reference herein and such referenced sections shall have effect as if fully recited within the text of this regulation. Copies can be obtained through the U.S. Food and Drug Administration or the S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

Add new subitem 61-47.C.1(f) to read:

(f) Harvesters shall complete Department approved training annually. The certified shippers shall only receive shellstock from harvesters who have completed Department approved training annually.

Revise 61-47.C.2(b) and (c) and add new subitems 61-47.C.2(d), (e) and (f) to read:

(b) Shellstock Temperature ~~Management~~ Control. ~~Within two (2) hours of receiving shellstock from a harvester, certified shippers shall implement procedures to manage shellstock temperature. For purposes of this item, shellstock shall be considered received when the shellstock are located in any portion of a certified shipper facility. Nothing in this item shall be construed to reduce the maximum allowable time period for shellstock temperature control. Acceptable methods of temperature management for the period from two hours after receipt of shellstock to the maximum allowable time period for temperature control are:~~

~~(1) Mechanical refrigeration;~~

~~(2) Icing;~~

~~(3) Mechanical air conditioning, at conditioned temperatures no greater than sixty-eight (68) degrees Fahrenheit;~~

~~(4) Evaporative cooling, including, but not limited to equipment such as fans, blowers, and/or potable water sprays;~~

~~(5) Shading, however, the use of shading alone is only acceptable when ambient (surrounding) air temperatures are no greater than sixty-eight (68) degrees Fahrenheit.~~

~~(c) Shellstock Temperature Control. For purposes of initial processing, shellstock temperature control shall be defined as the management of the internal temperature of shellstock by means of ice, mechanical refrigeration or other approved means which is capable of lowering the temperature of the~~

~~shellstock and will maintain it at fifty (50) degrees Fahrenheit [ten (10) degrees Centigrade] or less. Shellstock shall:~~

(1) Shellstock Temperature Control is the management of the internal temperature of shellstock by means of ice, mechanical refrigeration or other approved means which is capable of lowering the temperature of the shellstock and will maintain shellstock at fifty (50) degrees Fahrenheit (ten (10) degrees Centigrade) or less. Ice must be from a Department approved source.

(2) Within two (2) hours of receiving shellstock from a harvester, certified shippers shall implement procedures to control shellstock temperature as described in item C.2.(b)(1). For purposes of this item, shellstock shall be considered received when the shellstock are located in any portion of a certified shipper facility. Nothing in this item shall be construed to increase the maximum allowable time period for shellstock temperature control.

~~(1) Be placed under temperature control by the receiving certified shipper within eighteen (18) hours from the time of harvest during months when additional controls are not required. Shellfish harvested during months that do require additional controls must be placed under temperature controls within twelve (12) hours from the time of harvest. Clams harvested during these control months may be tempered using a Department approved tempering plan.~~

(c) Shellstock harvested during months that do not require additional temperature controls shall be placed under temperature control by the receiving certified shipper within eighteen (18) hours from the time of harvest.

(d) Months that do require additional temperature controls will be designated in the latest version of the South Carolina Vibro Control Plan, which is updated annually in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(e) Shellstock harvested during months that do require additional temperature controls shall be limited to clams as described in item C.2.(e)(1) and maricultured shellfish and shall be managed as follows:

(1) Clams shall be under temperature control by the receiving certified shipper within twelve (12) hours from the time of harvest or may be tempered for a longer period of time using a Department approved tempering plan. For the purpose of this item, clams means the species *Mercenaria mercenaria*, unless otherwise approved by the Department.

(2) Harvesters shall only harvest maricultured oysters submerged for a minimum of 14 days prior to harvest. The certified shipper shall place the oysters under temperature controls sufficient to reach an internal temperature of fifty (50) degrees Fahrenheit (ten (10) degrees Centigrade) or less within two (2) hours from the time the oysters are received by the certified shipper. For purposes of this item, oysters shall be considered received by the certified shipper when the oysters are located in any portion of a certified shipper facility. The time from harvest to receipt by a certified shipper shall be managed as follows:

(a) The certified shipper shall only receive oysters harvested on the same calendar day. The certified shipper shall not receive oysters after 10:00 A.M. unless the oysters are iced or mechanically refrigerated as described in item C.2.(e)(2)(c).

(b) For oysters received by the certified shipper after 10:00 AM, the certified shipper shall only receive oysters that are:

(i) within 4 hours from the start of harvest; and

(ii) completely covered by ice or mechanically refrigerated at an ambient air temperature of forty-five (45) degrees Fahrenheit (seven (7) degrees Centigrade) or less.

(c) The harvester shall only deliver oysters harvested on the same calendar day to a certified shipper. For oysters received by the certified shipper after 10:00 AM, the harvester shall place oysters into cooling immediately after harvesting by completely covering the oysters with ice or by mechanical refrigeration maintained at an ambient air temperature of forty-five (45) degrees Fahrenheit (seven (7) degrees Centigrade) or less. After being placed into cooling, the harvester shall keep the oysters in cooling continuously until received by the certified shipper. The harvester shall follow the procedures for cooling and maintaining continuous cooling for the oysters that are included in the operational plan required in item O.6. The harvester shall use ice from a Department approved source.

(3) The requirements for maricultured oysters described in item C.2.(e)(2) also apply for other maricultured shellfish, unless otherwise approved by the Department.

(f) Temperature control requirements for confirmed illnesses.

(~~2~~1) In the event a growing area or portion of a growing area is confirmed as the original source of product associated with two (2) or more Vibrio vulnificus illnesses within the past (10) years, the maximum hours to temperature control for shellfish shall, upon notice provided by the Department, be in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, VIII. Control of Shellfish Harvesting. Shellfish not meeting times and temperature controls may, with Department approval, be diverted to post-harvest processing as defined in this regulation or be deemed adulterated.

(~~3~~2) In the event a growing area or portion of a growing area is confirmed as the original source of product associated with two (2) or more Vibrio parahaemolyticus illnesses within the past five (5) years, the maximum hours to temperature control for shellfish shall, upon notice provided by the Department, be in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, VIII. Control of Shellfish Harvesting. Shellfish not meeting times and temperature controls may, with Department approval, be diverted to post-harvest processing as defined in this regulation or be deemed adulterated.

Revise 61-47.C.2(d) to read:

(~~d~~g) Identification of Shellstock in the Marketplace.

(1) When at the facilities of a certified shipper, unless certified as a reshipper (RS), shellstock shall be tagged in accordance with the provisions of item C.1.(c) or item C.2.(~~d~~g)(2) at all times.

Revise 61-47.C.2(e) to read:

(e~~h~~) Shucked Shellfish Temperature Control. Shucked shellfish shall be stored and maintained in accordance with the following:

Revise 61-47.C.2(f) to read:

(~~f~~i) Shucked Shellfish Labeling. Prior to sale or distribution, each individual container of shucked shellfish shall be labeled as follows:

Revise 61-47.C.2.3(c)(b)(4) to read:

(4) Nothing in item C.3.(c)(3) shall be construed to make unlawful the intrastate shipment of shellstock harvested from within the State provided such shellstock have not exceeded any maximum allowable time period for temperature control as established by item C.2.(c)~~.~~and C.2.(e).

Revise 61-47.I.4 to read:

4. Shellstock Temperature ~~Management~~ Control. Certified shippers shall manage shellstock temperature in accordance with the provisions of item C.2.(b).

Revise 61-47.I.5 to read:

5. Temperature Control. Certified shippers shall control shellfish temperatures in accordance with the provisions of items C.2.(c), ~~and~~ C.2.(e)~~.~~and C.2.(h).

Revise 61-47.I.6 to read:

6. Shellstock Identification. Certified shippers shall identify shellstock in accordance with item C.2.(~~d~~g)(1) of this Regulation.

Revise 61-47.I.7 to read:

7. Shucked Shellfish Labeling. Certified shippers shall label shucked shellfish in accordance with item C2.(~~f~~i)(1) of this Regulation.

Revise 61-47.O.6 to read:

6. Mariculture Permit Areas. Operators of shellfish mariculture permit areas permitted by the South Carolina Department of Natural Resources shall provide the Department with a written operational plan that shall include:

(a) A description of activities associated with the operation including, but not limited to, the operational requirements in C.2.(e)(2);

(b) The specific site and boundaries in which shellfish culture activities will be conducted;

(c) The types and locations of any structures, including rafts, pens, cages, nets, tanks, ponds, or floats utilized in the aquaculture operation;

(d) The type and source of shellfish, including seed, to be cultured and harvested;

(e) Documentation of the source of seed shellstock~~.~~;

(f) Record keeping to document compliance with the requirements described in item C.2.(e)(2) for maricultured shellfish harvested during months that do require additional temperature controls.

ATTACHMENT D
DRAFT STATE REGISTER NOTICE OF PROPOSED REGULATION
PROPOSED AMENDMENT OF R.61-47, SHELLFISH
September 11, 2014

Document No.____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-1-140

R.61-47, Shellfish

Preamble:

Regulation R.61-47 was last substantively amended on June 26, 2015. The regulation contains requirements for the safe and sanitary harvesting, storing, processing, handling and transportation of molluscan shellfish (oysters and clams) to protect the health of consumers of shellfish. For South Carolina shellfish to be acceptable for interstate and international commerce, the regulation must be consistent with the requirements of the National Shellfish Sanitation Program (NSSP), as determined by the US Food and Drug Administration (FDA).

The Department proposes to amend R. 61-47 to provide further clarification and specific technical requirements regarding the harvesting and handling of molluscan shellfish during the warmer months of the year (*i.e.*, months that require additional temperature controls). The amendments will allow for the harvest of molluscan shellfish during months that require additional temperature controls in a manner that is consistent with national shellfish sanitation program and protects the health of the consumers of molluscan shellfish. The amendment will include a requirement for certified shippers to only accept shellfish from harvesters that have received annual training on key regulatory requirements and safe and sanitary practices related to the harvesting and handling of shellfish in South Carolina. The amendment will update the reference date for the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish from 2013 to 2015 (the latest version of the document). The amendment will include stylistic changes to correct for spelling, clarity, readability, grammar, and codification for overall improvement of the text of the regulation.

A Notice of Drafting for this proposed regulation was published in the State Register on May 27, 2016.

Section-by-Section Discussion of Proposed Regulations

The discussion is submitted to the Board in Attachment B and is omitted here to conserve space in the Board item.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons are provided an opportunity to submit written comments on the proposed regulation by writing to Charles Gorman, P.G., Bureau of Water, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by e-mail at gormancm@dhec.s.gov. To be considered, written comments must be received no later than 5:00 p.m. on October 24, 2016 the close of the public comment period. Written comments received by the October 24, 2016 deadline shall be considered by the Department in formulating the final proposed regulations for public hearing on December 8, 2016 as noticed below. The Department will submit a summary of public comments and Department responses to the Board for its consideration at the public hearing.

Copies of the proposed amendments for public comment as published in the State Register on September 23, 2016, may be obtained online in the DHEC Regulation Development Update at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/. In the Update, click on the Water category and scan down to the proposed amendments of R.61-47. A copy can also be obtained by contacting Charles Gorman at the above address, by calling (803) 898-3993, or by email at gormancm@dhec.sc.gov.

Interested members of the public and regulated community are also invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control on December 8, 2016. The Board will conduct the public hearing, Third Floor, Aycock Building of the S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00 a.m., at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department 24 hours in advance of the meeting at the following address: http://www.scdhec.gov/Agency/docs/AGENDA.pdf. The agenda will also provide notice of cancellation or any change in meeting times. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street entrance and register at the front desk.

Preliminary Fiscal Impact Statement:

Implementation of these amendments may require additional resources to support the increased number of field and facility compliance inspections needed to monitor the increased shellfish harvesting and sales during the warmer months of the year. For example, inspections will be needed to ensure maricultured shellfish are brought under temperature control in accordance with the regulation to protect public health. The resource demands on the Department and State government will depend on how much the shellfish industry grows and harvesting activities increase during the warmer months of the year in response to the additional business opportunities created by these amendments.

Statement of Need and Reasonableness:

This statement is submitted to the Board in Attachment A and is omitted here to conserve space in the Board item.

Statement of Rationale:

The text of the statement of rationale is submitted in Attachment A to conserve space in the Board item.

Text:

The text of the revisions is submitted to the Board in Attachment C and is omitted here to conserve space in the Board item.

ATTACHMENT E
STATE REGISTER NOTICE OF DRAFTING
PROPOSED AMENDMENT OF R.61-47, SHELLFISH
May 27, 2016

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-1-140 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-47, *Shellfish*. Interested persons are invited to submit their views and recommendations in writing to Charles Gorman, P.G., Division of Water Monitoring, Assessment and Protection, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201, or by email at gormancm@dhec.sc.gov. To be considered, written comments must be received no later than 5:00 p.m. on June 27, 2016, the close of the drafting comment period.

Synopsis:

Regulation R.61-47, *Shellfish*, contains requirements for the safe and sanitary harvesting, storing, processing, handling and transportation of molluscan shellfish to protect the health of consumers of shellfish. For South Carolina shellfish to be acceptable for interstate and international commerce, the regulation must be consistent with the requirements of the National Shellfish Sanitation Program (NSSP), as determined by the US Food and Drug Administration (FDA).

The proposed amendments will provide specific criteria for the harvesting and handling of molluscan shellfish during months that require additional controls (*i.e.*, the warmer months of the year). The reason for adding these specific criteria to the regulation are to protect the health of consumers of shellfish. Molluscan shellfish harvested during times of the year with warmer water and air temperatures have been shown to have a higher risk of vibro bacteria related illnesses. Consequently, the harvesting and handling criteria for molluscan shellfish harvested during months that require additional controls will be more restrictive than the harvesting and handling criteria for molluscan shellfish harvested during months that do not require additional controls (*i.e.*, the cooler months of the year). The proposed additional controls are likely to include, but are not limited to, the harvest time of day and the time allowed from harvest to refrigeration.

The Department also may include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification and overall improvement of the text of the regulation.

Legislative review will be required.

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
September 8, 2016

(X) ACTION
( ) INFORMATION

I. TITLE: Proposed Amendments of Regulation 61-105, *Infectious Waste Management Regulations.*

Legislative review is required.

II. SUBJECT: Request Initial Approval to Publish Notice of Proposed Regulation in the *State Register* to Provide Opportunity for Public Comment

III. FACTS:

1. Pursuant to S.C. Code Section 44-93-10 et seq., the Department of Health and Environmental Control (Department) proposes to amend Regulation 61-105, *Infectious Waste Management Regulations*. This Regulation was last amended June 25, 2010.

2. These amendments seek to provide greater protections for the public, remove any perceived uncertainty with respect to existing provisions, and ensure consistency with U.S. Department of Transportation (U.S. DOT) regulations.

3. These proposed regulations require facilities having a permit by rule to notify the Department of the type of treatment they will utilize and clarify requirements for any waste facilities that are pre-treating. The proposed regulations include body art facilities (tattoo and body piercing) in the types of facilities that generate infectious waste in order to make the Infectious Waste Management Regulation consistent with Health Licensing requirements. Recordkeeping requirements include a timeframe for records to be provided to the Department after an inspection. Timeframes are addressed for variances and alternative treatment technology approvals, including expiration and opportunities for renewal. The requirements also allow better communication with facilities and tracking of facilities. Annual reporting requirements for treatment facilities are revised and clarified to require amounts of waste treated to correspond to the state of origin. Facilities that treat waste through steam sterilization will be required to record the pressure during the treatment process as well as having the pressure gauge calibrated annually. These records are already required for temperature and are already being provided by the permitted treatment facility in the State. Demonstration of need requirements are more consistent with those of other similar programs. The definition(s) and requirements for storage of waste are clarified. Requirements for financial assurance documentation requirements are revised to better protect the Department and South Carolina residents. The requirements for the handling of products of conception are revised to include documentation of donation and notification of necessary incineration. The standards for waste treatment technologies are updated. The amendments allow transporters to only disinfect their vehicles once a day, while still requiring immediate disinfection of visible debris and now requiring a log to be kept of disinfection. The requirement that transporters submit training documentation annually is removed, as inspectors check for these records during regular inspections. Finally, the proposed regulations include nonsubstantive stylistic revisions and a table of contents will be added.

4. Pursuant to S.C. Code Section, 1-23-120(A), the proposed amendments will require legislative review.

5. Pursuant to S.C. Code Section 1-23-110(A)(1), the Department initiated the statutory process to amend R.61-105 by publication of a Notice of Drafting in the *State Register* on March 27, 2015. The public comment period ended on April 26, 2015. Notice was also published in the DHEC Regulation Development Update online. The Department received no comments during this public comment period.

6. Staff met with regulated tattoo and body piercing facility owners on April 15, 2015. The owners, from a list generated of Health Licensees in the Agency database, were notified by mail about this stakeholder meeting. Five people, representing three facilities, attended the meeting. They had no comments for our Program about the proposed Regulation.

Staff met with infectious waste transporters on April 15, 2015. The transporters, all those registered with the infectious waste program, were notified by mail about this stakeholder meeting. Five people, other than Agency staff, attended the meeting, representing four transport companies.

One transporter felt that the solid waste regulations may not be the best model for new demonstration of need requirements but the certificate of need program may have language that would be useful. The Program reviewed the current certificate of need language and felt that none was applicable. Another transporter indicated, as U.S. DOT regulates transporter insurance, the Department could ask transporters to submit the same form U.S. DOT requires as proof of insurance. Staff considered this suggestion in modifying the draft language.

7. A second Notice of Drafting was published in the *State Register* on April 22, 2016 in order to afford staff additional time to formulate the proposed regulation. The public comment period for that Notice ended on May 22, 2016. Notice was again published in the DHEC Regulation Development Update online. The Department received one written comment during this second public comment period. The comment was reviewed, although it was fairly general in scope with no specific recommendations being made. A copy of the updated Notice of Drafting is submitted as Attachment E.

8. Pursuant to agency internal review policy, all appropriate Department personnel have reviewed the proposed amendments.

9. A Statement of Need and Reasonableness is submitted as Attachment A. A Summary of Proposed Revisions and Text of the Proposed Amendments are submitted as Attachments B and C.

10. Department staff requests initial Board approval to publicly notice the proposed amendments to provide opportunity for public comment. If approved, a Notice of Proposed Regulation will be published in the *State Register* on September 23, 2016, and a public hearing before the DHEC Board will be scheduled for December 8, 2016. A draft Notice of Proposed Regulation is submitted as Attachment D.

IV. ANALYSIS:

The proposed amendments make changes identified to seek to provide greater protections and remove any perceived uncertainty with respect to existing provisions. For further analysis, see the Statement of Need and Reasonableness in Attachment A.

V. RECOMMENDATION:

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register*, provide opportunity for public comment, receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Daphne G. Neel
Chief
Bureau of Land and Waste Management

Myra C. Reece
Director of Environmental Affairs
Environmental Quality Control

Attachments

A. Statement of Need and Reasonableness and Rationale
B. Summary of Proposed Revisions
C. Text of Proposed Amendments
D. Draft of *State Register* Notice of Proposed Regulation
E. *State Register* Notice of Drafting

DRAFT STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR REGULATION 61-105, INFECTIOUS WASTE MANAGEMENT REGULATIONS
September 23, 2016

Document No. _____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-93-10 et seq.

Regulation 61-105, Infectious Waste Management Regulation

Preamble:

The Department of Health and Environmental Control (Department) proposes to amend R.61-105. These proposed amendments seek to provide greater protections for the public, remove any perceived uncertainty with respect to existing provisions, and ensure consistency with U.S. Department of Transportation regulations. Stylistic changes are included that will improve the overall quality of the Regulation.

These proposed regulations require facilities having a permit by rule to notify the Department of the type of treatment they will utilize and clarify requirements for any waste facilities that are pre-treating. The proposed regulations include body art facilities (tattoo and body piercing) in the types of facilities that generate infectious waste in order to make the Infectious Waste Management Regulation consistent with Health Licensing requirements. Recordkeeping requirements include a timeframe for records to be provided to the Department after an inspection. Timeframes are addressed for variances and alternative treatment technology approvals, including expiration and opportunities for renewal. The requirements also allow better communication with facilities and tracking of facilities. Annual reporting requirements for treatment facilities are revised and clarified to require amounts of waste treated to correspond to the state of origin. Facilities that treat waste through steam sterilization will be required to record the pressure during the treatment process as well as having the pressure gauge calibrated annually. These records are already required for temperature and are already being provided by the permitted treatment facility in the State. Demonstration of need requirements are more consistent with those of other similar programs. The definition(s) and requirements for storage of waste are clarified. Requirements for financial assurance documentation requirements are revised to better protect the Department and South Carolina residents. The requirements for the handling of products of conception are revised to include documentation of donation and notification of necessary incineration. The standards for waste treatment technologies are updated. The amendments allow transporters to only disinfect their vehicles once a day, while still requiring immediate disinfection of visible debris and a now requiring a log to be kept of disinfection. The requirement that transporters submit training documentation annually is removed, as inspectors check for these records during regular inspections. Finally, the proposed regulations include nonsubstantive stylistic revisions and a table of contents will be added.

A Notice of Drafting for these proposed amendments was published in the *State Register* on April 22, 2016.

Section-by-Section Discussion of Proposed Amendments:

SECTION CITATION/EXPLANATION OF CHANGE:

Statutory Authority is revised to replace the section symbol with written text to "Section;" Section 44-93-100 is deleted because the entire statute applies and this is not needed. Also, identification of the Act is

removed; each change is made pursuant to Legislative Council standards for drafting regulations. These changes are not substantive.

TITLE

The title is changed to Regulation 61-105, Infectious Waste Management Regulation to reflect that the Regulation should be taken as a single body of work.

TABLE OF CONTENTS

A Table of Contents will be added.

All Section titles are bolded for ease of reference.

A. Purpose and Scope.

A(1) is revised for grammatical consistency.

A(2) is revised for grammatical consistency.

A(3) has been revised for clarity of language and the language from A(4) and A(5) are added as subsections, as all the language relates to requirements of the regulated community.

A(3) through A(5) have been recodified.

A(4) is renumbered as A(3)(b) as it is also a requirement of the facilities listed in A(3).

A(5) is renumbered as A(3)(c) as it is also a requirement of the facilities listed in A(3).

A(4) and A(5) are deleted.

B. Severability.

This paragraph was revised for grammatical consistency and moved for stylistic consistency.

C. Use of Number and Gender.

C is revised for grammatical consistency and moved for stylistic consistency.

C(1) is revised to delete the word “and” at the end and for grammatical consistency.

C(2) is revised to delete the word “and” at the end and for grammatical consistency.

C(3) is revised to add the word “and” at the end and for grammatical consistency.

C(4) is revised for grammatical consistency.

D. Definitions.

D(1) is revised for grammatical consistency.

At D(1) eight definitions are added in alphabetical order. Twenty-six existing definitions are revised. Eleven existing definitions are deleted.

New definitions include: “Alternate treatment technology”, “Demonstration of need”, “Director”, “Donate”, “Planning radius”, “Trust agreement”, “U.S. DOT”, and “USPS”.

The following definitions are revised: “Certification”, “Closure”, “Contingency Plan”, “Dispose”, “EPA”, “Expand”, “Generator facility”, “Generator Registration Status”, “Hazardous waste”, “Infectious waste”, “Intermediate handling facility”, “Manifest”, “Offsite”, “Products of conception”, “Pump event”, “Radioactive material”, “Release”, “Site”, “Solid waste”, “State”, “Supersaturated”, “Transfer Facility”, “Transporter”, “Transport vehicle”, “Treatment facility”, and “Universal biohazard symbol”.

The following definitions are deleted: “CFR”, “Commissioner”, “Containment”, “Destination facility”, “EPA identification number”, “Existing facility”, “Final closure”, “Free liquids”, “Onsite”, “Secured area”, and “Transport”.

E. Definition of Infectious Waste.

E(1) introduction is expanded by adding regulated body piercing and tattooing to the types of activities that generate regulated infectious waste and revised for grammatical consistency.

E(1)(a) is revised for brevity and clarity of language. “Including but not limited to” is replaced with “e.g.,”.

E(1)(b) is revised for brevity and clarity of language. “Including but not limited to” is replaced with “e.g.,”.

E(1)(c) is revised for brevity and clarity of language. “Including but not limited to” is replaced with “e.g.,”.

E(1)(d) is revised for brevity and clarity of language. “Including but not limited to” is replaced with “e.g.,”. Language is added to explicitly include any material that results from the termination of a pregnancy as pathological waste (written policy per letter from Phil Morris) and other visibly bloody bodily fluids. Exemption for preserved tissues is moved to create E(2)(h).

E(1)(e) is revised for consistency with other categories, brevity and clarity of language.

E(1)(f) is revised to update and clarify the possible sources of isolation waste. “Guidelines” no longer has a complete list of highly communicable diseases although it does include some criteria.

E(1)(g) is revised to clarify requirement to manage solid waste that comes in contact with infectious waste. Generators must include solid waste in written policy if they choose to dispose of it as infectious waste. Otherwise, solid waste should only be included with infectious waste accidentally.

E(1)(h) is revised for clarity of language and formatting consistency.

E(2)(a) is revised for grammatical and formatting consistency.

E(2)(b) is revised for grammatical and formatting consistency.

E(2)(c) is revised to remove unnecessary language.

E(2)(d) is revised to replace “Commissioner” with “Director” and for grammatical consistency.

E(2)(e) is revised for grammatical and formatting consistency and for clarity of language.

E(2)(f) is revised for clarity of language and grammatical consistency.

E(2)(g) is revised for grammatical consistency.

E(2)(h) is created from language moved from E(1)(d) so that all exemptions are in the same paragraph.

F. Generator Requirements.

F(1) is reorganized and revised for clarity of language.

F(1)(b) is revised for clarity of language.

F(1)(c) is revised for clarity of language.

F(1)(d) is revised for clarity of language.

F(1)(e) is revised for clarity of language.

F(1)(f) is revised to allow the possibility of multiple coordinators and to clarify what the coordinator(s) have responsibility for.

F(1)(g) is revised for formatting and data-gathering consistency.

F(1)(h) is revised to delete the word “and” at the end.

F(1)(i) is revised by adding: “an email address for the facility or the infectious waste coordinator;” and moving the original text to create F(1)(j).

F(1)(j) is created from the text that was originally in F(1)(i).

F(1)(k) is added to require generators to include the name of the transporter they are using. This data was already being collected and helps the Program determine if the generator is using a properly registered transporter.

F(1)(l) is added to help generators determine if the transporter they are using is properly registered with the Program.

F(2) is revised to clarify requirements.

F(3) is reorganized for clarity and to clarify the requirements for generators who store waste in holding tanks.

F(4) is revised to clarify requirements.

F(5) Language is revised to clarify and separate requirements for protocol and to allow for the possibility that some small doctor's offices may have a single person in charge of the handling of infectious waste, instead of a committee.

F(5)(a) is created from language that was previously in F(5).

F(5)(b) is created from requirements previously in F(5) and further details are added detailing what inspectors will expect to see in the protocol.

F(5)(c) is created from requirements previously in F(5).

F(6)(a) is revised to clarify requirements.

F(6)(b) is revised to clarify requirements and for grammatical consistency.

F(6)(c) is reorganized for clarity and grammatical consistency.

F(6)(d) is revised to clarify requirements.

F(6)(e) is revised for grammatical consistency.

F(6)(f) is revised for grammatical consistency.

F(6)(g) is revised for grammatical consistency and to remove the word "and" from the end.

F(6)(i) is reorganized for clarity and to recognize parcel delivery services other than the USPS.

F(6)(j) is revised for grammatical consistency, to clarify the timeframes for weight records, and to add "and" at the end.

F(6)(k) is added to put the primary (but not complete) responsibility on generators to properly manage product of conception waste, including examples of how they can convey the need to incinerate to the transporter and treatment facility.

F(7) is revised for clarity and grammatical consistency.

F(9) is created so that generators have the same requirement as other members of the regulated community to prevent discharges and have the same process in the case of a discharge.

F(10) is created to lay out requirements for the donation of products of conception.

F(10)(a) is created to require that a record be created when products of conception are donated on a Department-approved form.

F(10)(a)(i) is created to require that the form used to record a donation of products of conception include the weight of the material donated.

F(10)(a)(ii) is created to require that the form used to record a donation of products of conception include the date of donation.

F(10)(a)(iii) is created to require that the form used to record a donation of products of conception include assurances that: the materials were donated and no payment exceeds reasonable compensation for costs.

G. Small Quantity Generators.

G(1) is revised for clarity of language and to include new requirements created in Section F.

G(1)(a) is reorganized for clarity and revised for grammatical consistency and to add more detail to the requirements for small quantity generators.

G(1)(b) is revised to reduce redundancy.

G(2) is revised to be consistent with U.S. Department of Transportation (U.S. DOT) requirements.

G(2)(a)-(e) are deleted to be consistent with U.S. DOT requirements..

G(3) is revised to explicitly list the options generators have for untreated waste that is picked up at their facility and for grammatical and technical consistency.

G(4) is revised and reorganized for grammatical consistency and clarity of language.

H. Segregation Requirements.

H is revised for clarity of language and reorganized.

H(1), (2) and (3) are created from requirements previously included in the body of H, also adding specificity.

I. Packaging Requirements.

I(1) is revised for clarity, technical consistency, to update the source of requirements for parcels going through the mail (as the requirements are no longer in the Domestic Mail Manual but are in a separate document, Publication 52), and to recognize parcel delivery services other than the USPS.

I(2) is revised to reduce redundancy and for grammatical consistency.

I(3) is revised so that it will stand alone as a citation and for grammatical consistency.

I(4) is revised for grammatical consistency.

I(5) is revised for clarity of language and grammatical consistency.

I(6) is revised to separate requirements and for grammatical consistency.

I(6)(a) is created from requirements that were originally in I(6).

I(6)(b) is created from requirements that were originally in I(6).

I(7) is revised for clarity of language.

I(8) is revised for grammatical consistency.

I(9) is revised for grammatical consistency.

I(11) is deleted, as it is redundant to requirements already included in Section H.

I(12) is deleted and the requirement moved to Section J, becoming J(7). The requirement is related to labeling of waste once it has been treated, so it fits better in Section J.

J. Labeling of Containers.

J(1) is revised for grammatical consistency and to specify where further information is provided.

J(2) is revised for grammatical consistency.

J(a)-(d) are reorganized and revised to be consistent with U.S. DOT and Occupational Safety and Health Administration (OSHA) requirements.

J(2)(a) is revised to combine, in one citation, the required physical properties of labeling on containers of infectious waste that were previously found in separate citations.

J(2)(b) language is moved to J(2)(d).

J(2)(b) is added to require consistency with OSHA standards.

J(2)(c) language is moved to J(2)(a).

J(2)(c) is added to be consistent with U.S. DOT standards.

J(2)(d) language is moved to J(2)(e).

J(2)(d) is revised to include language moved from J(2)(b) and delete language moved to J(2)(e).

J(2)(e) is created from what was originally J(2)(d).

J(2)(f) is created to require labeling of containers with any special handling instructions, such as incineration.

J(3) is revised to specify where further information is located and to allow regulation of bags that are not inside a container.

J(4) is revised to specify where further information is located and for grammatical consistency.

J(5) is revised for grammatical consistency.

J(7) is created from language that was originally I(12). This language was also revised to allow exemptions from labeling of treatment residue if the person treating the waste has a written agreement with the landfill accepting the treatment residue. Extra-large quantity generators (generators generating 1000 pounds or more in any one month as defined in the Environmental Protection Fees Regulation) and treatment facilities have such volumes of treatment residue that labeling would be prohibitively expensive and labor-intensive, but they have agreements in place with landfills, including requirements that the waste be treated before disposal that will ensure public health and the environment are protected.

J(7)(a) is created from language that was originally in I(12).

J(7)(b) is created from language that was originally in I(12).

J(7)(c) is created from language that was originally in I(12).

K. Storage of Infectious Waste.

K(1) is revised for grammatical consistency and for clarity of language.

K(1)(a) is revised for grammatical consistency.

K(1)(b) is revised to strengthen the requirement to protect infectious waste packaging (proactive vs. reactive) and for grammatical consistency.

K(1)(c) is revised for grammatical consistency.

K(1)(d) is created to clarify requirements for packaging, so that waste meets U.S. DOT requirements for transport.

K(2) is revised for brevity and clarity of language. "For example" is replaced with "e.g.,".

K(3) is revised to make the requirement to allow access proactive instead of reactive.

K(4) is revised for grammatical consistency.

K(4)(a) is added to include a requirement for sign size. This will make it easier for inspectors to require the replacement of signs that are ineffective.

K(4)(b) is added to include a requirement for sign replacement as needed. This will make it easier for inspectors to require the replacement of signs that are ineffective.

K(5) is revised for grammatical consistency and to explicitly require that putrescent waste must be handled immediately.

K(5)(a) is revised for grammatical and formatting consistency.

K(5)(b) language is moved to K(5)(c).

K(5)(b) is added to clarify storage requirements and timeframes when a generator chooses to properly treat waste and then send it for further treatment.

K(5)(c) language is moved to K(5)(d).

K(5)(c) is revised to include language originally in K(5)(b) and for formatting consistency.

K(5)(d) is created from language that was originally in K(5)(c) and this language is revised for grammatical and formatting consistency.

K(6) is revised for clarity of language.

K(7) is reorganized for clarity of language.

L. Disinfection Standards.

L(1) is revised for grammatical consistency.

L(1)(a) is revised for grammatical consistency.

L(1)(b) is revised to include changes from internal review for the Governor's Regulatory Review Task Force to ease the burden of disinfecting the cargo-carrying body of the vehicle if more than one transport route is driven per day. Facilities are still required to disinfect spilled waste immediately. The language is reorganized to take these new requirements into account.

L(1)(b)(i) is created to change the time requirement for disinfection.

L(1)(b) (ii) is created to require rented vehicles that are used to transport infectious waste be disinfected before being returned to their owner.

L(1)(c) is revised for clarity and for grammatical consistency.

L(1)(d) is created to require transporters to keep a record of disinfecting vehicles.

L(2) is deleted, as it is a suggestion, not a requirement. It will therefore be moved to a guidance document rather than staying in the Regulation.

L(3) is renumbered as L(2) and revised for clarity and grammatical consistency.

M. Manifest Form Requirements for Generators.

M(1) is reorganized for clarity of language, grammatical consistency, and to separate requirements.

M(1)(a) through M(1)(k) are moved to M(2) and renumbered.

M(1)(a) is revised to include language that was originally in M(1).

M(1)(b) is revised to include language that was originally in M(1).

M(1)(c) is revised to include language that was originally in M(1).

M(1)(d) is revised to include language that was originally in M(1).

M(2) is renumbered as M(3).

M(2) is created from language that was originally in M(1).

M(1)(a) is renumbered as M(2)(a).

M(1)(b) is renumbered as M(2)(b).

M(1)(c) is renumbered as M(2)(c).

M(1)(d) is renumbered as M(2)(d).

M(1)(e) is renumbered as M(2)(e).

M(1)(f) is revised for clarity and consistency with U.S. DOT requirements and renumbered as M(2)(f).

M(1)(g) is revised for formatting consistency and renumbered as M(2)(g).

M(1)(h) is revised for formatting consistency and renumbered as M(2)(h).

M(1)(i) is revised for clarity of language and renumbered as M(2)(i).

M(1)(j) is revised for clarity of language, to add "and" at the end, and renumbered as M(2)(j).

M(1)(k) is revised for formatting consistency, renumbered as M(2)(k), and 'and' is added at the end..

M(1)(l) is revised to delete the requirement that the treatment facility must sign the manifest because the generator has no direct contact with the treatment facility and may be unable to get this piece of information. Language is added to require that any special handling instructions be noted on the manifest, such as incineration requirements.

M(2) is revised for grammatical and formatting consistency and renumbered as M(3).

M(3) is revised for grammatical and formatting consistency as well as clarity of language and renumbered as M(4).

M(4) is revised for formatting consistency and renumbered as M(5).

M(6) is created to match the U.S. DOT exemption for waste that is transported by USPS.

N. Infectious Waste Transporter Requirements.

N(1) is revised for formatting and grammatical consistency.

N(2) is revised for grammatical consistency and clarity of language.

N(3) is revised for grammatical consistency.

N(3)(a) is revised for formatting consistency and clarity of language.

N(3)(b) is revised for grammatical consistency.

N(4) is revised for clarity of language and grammatical consistency.

N(5) is revised for clarity of language and grammatical consistency.

N(5)(a) is revised for grammatical consistency.

N(5)(b) is revised for internal grammatical consistency.

N(5)(c) is revised for internal grammatical consistency.

N(6) is revised for clarity and grammatical consistency.

N(6)(b) is revised to refer to the newly revised definition of 'contingency plan'.

N(6)(d) is revised for internal grammatical consistency.

N(7) is revised to clarify that the plan submitted is a draft and it must be revised as needed to meet the Department's approval, in language originally from N(7)(a).

N(7)(a) is deleted because this language is now included in N(7).

N(7)(b) is renumbered N(7)(a) and revised for grammatical consistency.

N(7)(c) is renumbered as N(7)(b) and revised for clarity of language and grammatical consistency.

N(8) is revised for clarity of language.

N(9) is reorganized so that requirements are listed in the order that they should be completed and clarified as to who should complete actions.

N(10) is deleted as the language about cleaning up discharges was strengthened in N(9) during the most recent regulatory revision and N(10) is now redundant.

N(11) is renumbered as N(10) and revised for grammatical consistency.

N(12) is renumbered as N(11), clarified, and language moved from Q(1)(b) as it pertains better to Section N.

N(12) is revised to delete language added for N(11) and language is added to match the U.S. DOT exemption for waste that is transported by government employees in government vehicles.

O. Transporter Registration Requirements.

O(1) is revised for grammatical consistency.

O(1)(a) is revised for clarity and to reduce redundancy.

O(1)(b) language is moved to O(1)(d).

O(1)(b) is revised to require the transporter provide more information about company structure.

O(1)(c) language is moved to O(1)(e).

O(1)(c) is revised to require the transporter provide more information about contacts at the company.

O(1)(d) language is moved to O(1)(f).

O(1)(d) is revised with language originally in O(1)(b).

O(1)(e) language is moved to O(1)(g).

O(1)(e) is revised with language originally in O(1)(c) and for grammatical consistency.

O(1)(f) language is moved to O(1)(j).

O(1)(f)(i) language is moved to O(1)(j)(i).

O(1)(f)(ii) language is moved to O(1)(j)(ii).

O(1)(f)(iii) language is moved to O(1)(j)(iii).

O(1)(f) is revised with language originally in O(1)(d) and revised for grammatical consistency.

O(1)(g) language is moved to O(1)(h).

O(1)(g) is revised with language originally in O(1)(e) and revised for grammatical consistency.

O(1)(h) is created with language originally in O(1)(g) and revised for clarity of language.

O(1)(i) is created to require that transporters provide their Employer Identification Number upon registration, if they have one, to allow better identification and tracking of business identities and for consistency with Department standards.

O(1)(j) is created from language originally in O(1)(f) and revised to be more explicit about the U.S. DOT insurance requirements that transporters have to meet, allowing for the possibility that these requirements may get more stringent in the future.

O(1)(j)(i) is created from language originally in O(1)(f)(i) and revised to clarify insurance requirements and to require that the Department be notified if there are changes in a transporter's insurance.

O(1)(j)(ii) is created from language originally in O(1)(f)(ii) and revised for grammatical consistency.

O(1)(j)(iii) is created from language originally in O(i)(f)(iii).

O(1)(k) is added to require the transporter to provide an email address so that the Department can have better, easier communication with them.

O(2) is revised for formatting consistency and to clarify at whom the requirement is directed.

O(2)(a) is revised for clarity of language and grammatical consistency.

O(2)(b) is revised for grammatical consistency.

O(2)(c) is revised for clarity and grammatical consistency.

O(3) is revised for grammatical and formatting consistency and updated codification.

O(6) is revised for clarity and to update the source of requirements for parcels going through the mail.

P. Transporter Acceptance of Infectious Waste.

P is revised to recognize that a transporter becomes responsible for infectious waste when they load it on their vehicle or take it off the generator or previous transporter's property. P is moved for stylistic consistency.

P(1) is revised for grammatical consistency.

P(1)(a) is revised for clarity and to add an exception for trailers loaded and sealed prior to a transporter's acceptance (language originally in P(3)).

P(1)(b) is revised for clarity and to add an exception for trailers loaded and sealed prior to a transporter's acceptance (language originally in P(3)).

P(1)(c) is revised for formatting consistency.

P(2) is revised for grammatical consistency and to separate requirements.

P(2)(a) is revised with language originally in P(2) and for clarity of language and grammatical consistency. The original language from P(2)(a) is moved to P(2)(c).

P(2)(b) is revised with language originally in P(2).

P(2)(c) is created from language originally in P(2)(a).

P(3) is deleted because the language was added to P(1)(a) and P(1)(b).

P(3)(a) is deleted because the language is redundant to that in P(1)(c).

P(3)(b) is deleted because the requirement is redundant to that in Q(1)(c).

Q. Transport Vehicle Requirements.

Q(1) is revised to pull a common factor out of the following requirements, so that it does not have to be repeated in each phrase.

Q(1)(a) is revised for grammatical consistency and to make the transporter proactive instead of reactive.

Q(1)(b) is moved to Section N as the information pertains to that Section.

Q(1)(b) is revised to add language originally in Q(1)(c).

Q(1)(c) is renumbered as Q(1)(b).

Q(1)(c) is revised to add language originally in Q(1)(d).

Q(1)(d) is renumbered as Q(1)(c).

Q(1)(d) is revised to add language originally Q(1)(e).

Q(1)(e) is revised renumbered as Q(1)(d).

Q(1)(e) is revised to add language originally in Q(1)(f).

Q(1)(f) is renumbered as Q(1)(e).

Q(1)(f) is revised to add language originally in Q(1)(g).

Q(1)(f)(i) through (iii) are deleted and the language is moved to Q(1)(g)(i) through (iii).

Q(1)(g) is renumbered as Q(1)(f).

Q(1)(g) is revised to add language originally in Q(1)(h).

Q(1)(g)(i) is created from language originally in Q(1)(f)(i).

Q(1)(g)(ii) is created from language originally in Q(1)(f)(ii).

Q(1)(g)(iii) is created from language originally in Q(1)(f)(iii) and revised to add "and" at the end.

Q(1)(h) is renumbered as Q(1)(g).

Q(1)(h) is deleted, as the language was moved to Q(1)(g).

Q(2) is revised for clarity and for formatting consistency.

Q(3)(a) is revised for clarity and grammatical consistency.

Q(3)(b) is revised for clarity and grammatical consistency and to include "and" at the end.

Q(3)(c) is revised for grammatical consistency.

Q(4) is revised for technical consistency.

R. Manifest Requirements for Transporters.

R(1) is revised as not all transporters use the Department provided form, therefore its instructions would not be applicable in all cases and for grammatical consistency.

R(2) is revised for grammatical consistency.

R(2)(a) is revised for grammatical consistency and to include "and" at the end.

R(2)(b) is revised for grammatical consistency.

R(3) is revised for grammatical consistency and clarity of language.

R(4) language is moved to R(5).

R(4) is revised to add language to clarify who is responsible for filling in the date that waste is transferred on the manifest and for grammatical consistency.

R(5) language is moved to R(6).

R(5) is revised to add language originally in R(4).

R(5)(a) language is moved to create R(6)(a) and deleted.

R(5)(b) language is moved to create R(6)(b) and deleted.

R(6) language is moved to R(7).

R(6) is revised to add language originally in R(5) and for clarity of language and grammatical consistency.

R(7) language is moved to create R(8).

R(7) is revised to add language originally in R(6), for clarity of language, and grammatical consistency.

R(7)(a) language is moved to create R(8)(a) and deleted.

R(7)(b) language is moved to create R(8)(b) and deleted.

R(8) is created from language originally in R(7).

R(8)(a) is created from language that was originally in R(7)(a) and is revised for technical consistency.

R(8)(b) is created from language that was originally in R(7)(b) and is revised for clarity of language.

S. ~~Storage~~ Tank Storage Requirements.

The title of the section is revised to reflect that we are concerned with the storage of treatment residue, and the tank only as a storage method.

S(1) is revised to clarify the timeline for installing tanks that meet the new requirements, which were added when the Regulation was revised in 2010, for clarity, and for grammatical consistency.

S(2) is revised for grammatical consistency and to reflect the primary concern is the storage of treatment residue.

S(2)(a) is revised for clarity and formatting consistency.

S(2)(b) is revised for formatting and grammatical consistency.

S(2)(c) is revised for formatting and grammatical consistency.

S(2)(d) is revised for clarity and formatting and grammatical consistency.

S(2)(e) is revised for clarity and formatting and grammatical consistency.

S(2)(f) is revised for clarity of language.

S(2)(g) is revised for formatting and grammatical consistency.

S(2)(h) is revised for formatting and grammatical consistency and to delete an outdated reference.

S(3) is revised for clarity of language.

T. Infectious Waste Treatment.

T(1) is revised to add the requirement that treatment must be in accordance with this Regulation (originally in T(2)), for clarity of language, and for grammatical consistency.

T(2) is revised for clarity and to delete the requirement that was added in T(1).

T(3) is revised for grammatical consistency and to clarify the requirements for alternate treatment technology approvals and renewals.

T(4)(a) and (b) are created from language moved from T(5)(a) and (b).

T(5)(a) and (b) are moved to T(4)(a) and (b) as the requirements in (a) and (b) are related to waste disposal before treatment as opposed to storage.

T(5)(a) and (b) are deleted.

T(6) is deleted, as this requirement is a duplicate of that already included for each type of facility regulated.

T(7) is renumbered as T(6), revised for clarity, and reorganized to separate requirements.

T(6)(a) is created from a requirement that was originally in T(7).

T(6)(b) is created from a requirement that was originally in T(7).

T(8) is renumbered as T(7) and revised to refer to treatment standards already incorporated in Section U .

T(9) is renumbered as T(8).

T(9) is deleted, as the language was moved to T(8).

U. Treatment Facility and Generator Facility Standards.

The title of the section is revised to better reflect the contents and reduce redundancy.

U(1) is revised to include Section X as a possible exemption because facilities in Section X are regulated under permit by rule requirements and revised for clarity.

U(2) is revised for clarity of language and for grammatical consistency.

U(3) is deleted because it is redundant to T(1).

U(4) is renumbered as U(3), revised for clarity and grammatical consistency, and to pull a common factor out of the following requirements, so that it does not have to be repeated in each phrase.

U(4)(a) is renumbered as U(3)(a) and revised for internal grammatical consistency.

U(4)(b) is renumbered as U(3)(b) and revised for internal grammatical consistency.

U(4)(c) is renumbered as U(3)(c) and revised for internal grammatical consistency.

U(4)(d) is renumbered as U(3)(d) and revised for internal grammatical consistency.

U(4)(e) is renumbered as U(3)(e) and revised for a more complete description of the plan required.

U(4)(f) is renumbered as U(3)(f) and revised for internal technical consistency.

U(4)(g) is renumbered as U(3)(g) and revised for clarity and technical consistency.

U(4)(h) is renumbered as U(3)(h) and revised for clarity and internal grammatical consistency.

U(4)(i) is deleted because it is a duplicate requirement based on W(7)(i).

U(4)(j) is renumbered as U(3)(i) and revised for internal grammatical consistency.

U(4) is revised to delete language moved to U(3) and to include language moved from U(5).

U(4)(a) is deleted because the language was moved to U(3)(a).

U(4)(b) is deleted because the language was moved to U(3)(b).

U(4)(c) is deleted because the language was moved to U(3)(c).

U(4)(d) is deleted because the language was moved to U(3)(d).

U(4)(e) is deleted because the language was moved to U(3)(e).

U(4)(f) is deleted because the language was moved to U(3)(f).

U(4)(g) is deleted because the language was moved to U(3)(g).

U(4)(h) is deleted because the language was moved to U(3)(h).

U(4)(j) is deleted because the language was moved to U(3)(i).

U(5) is revised to delete language moved to U(4) and to include language moved from U(6).

U(5) is renumbered as U(4) and revised to remove the reference to disposal facilities, as this Regulation is not designed to regulate facilities that dispose of infectious or other waste.

U(6) is revised to delete language moved to U(5) and separate requirements.

U(6) is revised to describe how untreated waste must be handled.

U(7) is revised for grammatical consistency.

U(7)(a) is revised to reduce redundancy.

U(7)(b) is revised for clarity of language.

U(7)(c) is revised to include the word “and” at the end.

U(7)(d) is revised to delete the word “and” at the end.

U(7)(e) is renumbered U(8) because it is a separate statement from the rest of U(7) and is revised to put actions in order of priority.

U(7)(e) is deleted bacause the language was moved to U(8).

U(8) is revised to include text originally in U(7)(e) and to delete text moved to U(9).

U(8) is renumbered as U(9) and revised for clarity and the requirement to submit a training protocol is moved to Section W. The requirement to submit training documentation is deleted as an unnecessary burden, as that documentation can be checked during a regular inspection.

U(9) is revised to include text originally in U(8) and to delete text moved to U(10).

U(9) is renumbered as U(10) and revised for clarity of language and to separate requirements.

U(10) is revised to include text originally in U(9) and to delete language moved to U(10)(a), (b), and (c).

U(10)(a) is revised to include text originally in U(10) and to delete language moved to U(11)(a).

U(10)(b) is revised to include text originally in U(10) and to delete language moved to U(11)(a).

U(10)(c) is revised to include text originally in U(10) and to delete language moved to U(11)(a).

U(10)(d) is deleted and the text moved to create U(11)(d).

U(10)(e) is deleted and the text moved to create U(11)(e).

U(11) is revised to include text originally in U(10), to delete language moved to U(12), and revised for clarity of language.

U(11)(a) is created to include text originally in U(10)(a) and revised for grammatical consistency.

U(11)(b) is created to include text originally in U(10)(b) and revised for clarity of language and grammatical consistency.

U(11)(c) is created to include text originally in U(10)(c) and revised for clarity of language and grammatical consistency.

U(11)(d) is created to include text originally in U(10)(d).

U(11)(e) is created to include text originally in U(10)(e) and revised to simplify and clarify language.

U(11) is renumbered as U(12) and revised for clarity of language.

U(12) revised to include text originally in U(11) and to delete text moved to U(13).

U(12) is renumbered as U(13) and revised for clarity of language and grammatical consistency.

U(13) is revised to include text originally in U(12) and to delete text moved to U(13)(a), U(13)(b), U(13)(c), and U(14).

U(13)(a) is created from language originally in U(12), revised to delete the requirement of a bound log book, and revised to include changes from internal review for the Governor's Regulatory Review Task Force, and to delete language moved to U(14)(a).

U(13)(b) is revised to include text from U(12)(a) and to delete text moved to U(14)(b).

U(13)(c is revised to include text from U(12)(c) and to delete language moved to U(14)(c).

U(13) is renumbered U(14) and revised for clarity of language.

U(14)(a) is created from language moved from U(13)(a).

U(13)(b) is created from language moved from U(13)(b).

U(13)(b) is renumbered as U(14)(b) and revised to use the correct term.

U(13)(c) is created from language moved from U(13)(c) revised to recognize that the Infectious Waste Program would not be issuing authorizations to landfills and should not be setting requirements.

U(13)(c) is renumbered as U(14)(c) and revised to recognize that the Infectious Waste Program would not be issuing authorizations to landfills and should not be setting requirements.

U(14) is renumbered as U(15) and revised for clarity of language.

U(14)(a) is renumbered as U(15)(a) and revised for clarity of language and grammatical consistency.

U(14)(b) is renumbered as U(15)(b) and revised to separate requirements and include the requirement that pressure be recorded during treatment.

U(14)(c) is renumbered as U(15)(c) and revised to require calibration for pressure gauges and thermometers annually. The requirement to calibrate thermometers annually was originally in U(14)(b).

U(15)(d) is created to require that steam sterilizers meet manufacturer's specifications for treatment or prove that treatment is effective, if specifications are not available or need to be updated. Requirements for treatment are moved from U(14)(b) and revised to allow flexibility for updates of technology.

U(14)(d) is renumbered to U(15)(e).

U(14)(e) is renumbered as U(15)(f) and revised to match current biological naming standards and for clarity.

U(14)(f) is renumbered as U(15)(g) and revised to update and specify citations.

U(14)(g) is renumbered as U(15)(h) and revised for grammatical and formatting consistency.

V. Intermediate Handling ~~Facilities~~Facility Standards.

The section title is revised for grammatical consistency.

V(1) is revised to specify the citation and for grammatical consistency.

V(2) is revised for clarity and to pull a common factor out of the following requirements, so that it does not have to be repeated in each phrase.

V(2)(a) is revised for internal grammatical consistency.

V(2)(b) is revised for internal grammatical consistency.

V(2)(c) is revised for internal grammatical consistency.

V(2)(d) is revised for internal grammatical consistency.

V(2)(e) is revised for a more complete description of the plan required.

V(2)(f) is deleted as redundant with V(2)(e).

V(2)(g) is renumbered as V(2)(f), revised for technical consistency, and revised to add the word "and" at the end.

V(2)(h) is renumbered as V(2)(g) and revised for grammatical consistency.

V(2)(i) and (j) are deleted. A contingency plan is required in the permit application and an intermediate handling facility should not be generating waste for disposal.

V(3) is revised for clarity of language.

V(4) is revised for clarity and grammatical consistency, to add Department approval to the closure process, and to separate requirements.

V(5) is revised from language originally in V(4) and revised to reflect that the Program does not regulate facilities that dispose of infectious waste.

V(5) is renumbered as V(6).

V(6) is revised for clarity of language.

V(5)(a) is renumbered as V(6)(a) and revised to reduce redundancy.

V(5)(b) is renumbered as V(6)(b) and revised to use clearer language.

V(5)(c) is renumbered as V(6)(c) and revised to include "and".

V(5)(d) is renumbered as V(6)(d) and revised to delete "and".

V(5)(e) is renumbered as V(7) because it should be a separate requirement and revised to put actions in order of priority and for clarity of language.

V(6) is renumbered as V(8), revised for clarity, and the requirement to submit a training protocol is moved to Section W. The requirement to submit training documentation is deleted as an unnecessary burden, as that documentation can be checked during a regular inspection.

V(7) is renumbered as V(9).

V(9) is revised to clarify responsibilities, for grammatical consistency, and to separate requirements.

V(9)(a) is created from language originally in V(9).

V(9)(b) is created from language originally in V(9).

V(9)(c) is created from language originally in V(7.)

V(8) is renumbered as V(10) and revised for grammatical consistency.

V(9) is renumbered as V(11) and revised for clarity of language and to separate requirements.

V(9)(a) is deleted and the language is moved to V(11)(b).

V(9)(b) is deleted and the language is moved to V(11)(c).

V(10) is created from text originally in V(8).

V(11)(a) is created from language in V(11) and revised for clarity.

V(11)(b) is created from language in V(9)(a) and revised to ease the burden of disinfecting the cargo-carrying body of the vehicle if more than one transport route is driven per day. Facilities are still required to disinfect spilled waste immediately.

V(11)(c) is created from language in V(9)(b) and revised to use more precise language.

W. Permit Applications and Issuance.

W(1) is revised to include intermediate handling facilities in the requirement for a permit to be consistent with the rest of the regulation.

W(1)(a) through (d) are added to describe requirements for demonstration of need. These are derived from the requirements for solid waste facilities.

W(1)(a) is created to provide a geographical boundary for demonstrationof need.

W(1)(b) is created to provided a maximum yearly treatment capacity.

W(1)(b)(i) is created to include the host county in a permitted treatment facility's yearly treatment capacity.

W(1)(b)(ii) is created to include some of the waste treatment of surrounding counties in a permitted treatment facility's yearly treatment capacity.

W(1)(c) is created to provide conditions under which a permitted treatment facility can request an expansion of their yearly treatment capacity.

W(1)(d) is created to provide conditions under which a short-term variance can be provided to a treatment facility's permitted capacity.

W(2) is revised for grammatical consistency and formatting.

W(3) is revised for clarity of language.

W(3)(a) is revised for grammatical consistency.

W(3)(b) is revised for clarity of language.

W(3)(c) is revised to remove the word "or" at the end.

W(3)(d) is revised for clarity and to add the word "or" at the end.

W(3)(e) is created from language is W(4), as it is also an exemption from demonstration of need.

W(4) is deleted and the language moved to W(3)(e).

W(5) is renumbered W(4) and revised to allow forms other than Department-generated forms.

W(6) is renumbered W(5) and revised to clarify that the operations manual must be reviewed by the Department and that Section U and Section V each have instructions for the manual for the respective facilities.

W(7) is renumbered as W(6).

W(7)(a) is renumbered as W(6)(a) and revised for grammatical consistency.

W(7)(b) is renumbered as W(6)(b) and revised for grammatical consistency.

W(7)(c) is renumbered as W(6)(c).

W(7)(d) is renumbered as W(6)(d) and revised for formatting consistency and to remove the reference to disposal, as no infectious waste treatment facility would also be a final disposal facility for treated infectious waste.

W(7)(e) is renumbered as W(6)(e) and revised to elucidate which governmental body should have priority.

W(7)(f) is renumbered as W(6)(f) and revised to remove disposal from the processes that the facility can use with infectious waste.

W(7)(g) is renumbered as W(6)(g) and revised to remove disposal from the ways to handle infectious waste.

W(7)(h) is renumbered as W(6)(h) and revised to delete the requirement for a quality assurance and quality control report, as this was included in the requirements in Sections U and V. The requirement for training program requirements was added, moved from Sections U and V.

W(7)(i) is renumbered as W(6)(i) and revised to point to the new definition of 'contingency plan', to remove the specific requirement for a flood plan, as that may not be the most likely hazard for all facilities, and for grammatical consistency.

W(7)(j) is renumbered as W(6)(j).

W(7)(k) is renumbered as W(6)(k).

W(7)(l) is renumbered as W(6)(l).

W(7)(m) is renumbered as W(6)(m) and revised to better lead to the requirements for a treatment facility's closure plan in (i) and (ii).

W(7)(m)(i) is renumbered as W(6)(m)(i) and revised to include closure procedures in the closure plan, which were not previously required.

W(7)(m)(ii) is renumbered as W(6)(m)(ii) and revised to give more detail to the requirements foreclosure cost estimates, including that they be based on permit conditions and industry pricing.

W(6)(n) is added to require treatment facilities to provide their Employer Identification Number upon registration, if they have one, to allow better identification and tracking of business identities and for consistency with Department specifications.

W(6)(o) is added to require treatment facilities to provide an email address, if they have one, to allow easier and better communication between the Department and the facility.

W(7)(n) is renumbered to W(6)(p) and revised to allow the Department to request information.

W(8) is renumbered as W(7) and revised to specify the citation and for grammatical consistency and to add expansion as a condition that would require notifying the Department..

W(7)(a) through W(7)(n) are deleted because the text is moved to W(6)(a) through W(6)(o).

W(9) is renumbered as W(8) and revised for formatting consistency.

W(10) is renumbered as W(9) and revised, based on the hazardous waste regulation, for clarity of language.

W(11) is renumbered as W(10) and revised to allow more flexibility for renewal permit applications.

W(12) is renumbered as W(11) and revised to separate requirements for clarity. A requirement is added that financial responsibility coverage must be in place before a final permit will be issued. The Department is given the ability to use financial responsibility coverage to provide better protection for the health and safety of the public and the environment if the owner or operator is in violation of permit requirements.

W(12), (13), and (14) are added from requirements originally in W(11).

W(13) is renumbered as W(15) and revised so that it is explicitly required that at no time should a permittee operate without financial responsibility coverage.

W(14) is renumbered as W(16) and revised for clarity and to explicitly allow the Department the ability to approve or deny requests for new waste streams.

X. Permit by Rule.

X(1) is revised to clarify that facilities that properly treat infectious waste but then send it for further treatment do not need a permit by rule and for grammatical consistency.

X(2) is revised for grammatical consistency.

X(2)(a) is revised for technical consistency and to clarify the citation.

X(2)(b) is revised so that the waste stored or disposed of by a permit by rule facility does not count toward the seventy-five percent that must have been generated onsite.

X(2)(c) is revised for grammatical consistency and for internal technical consistency.

X(2)(d) is revised for clarity of language and for internal technical consistency.

X(2)(d)(i) is revised for clarity of language and for internal technical consistency.

X(2)(d)(ii) is revised to allow for the possibility that a generator may accept waste from more than one type of facility.

X(2)(d)(iii) is revised to delete “and”.

X(2)(d)(v) is added to require facilities that treat waste under permit by rule to inform the Department of the method of treatment at the time of their notification.

X(3) is revised to clarify the citations and for grammatical consistency.

X(4) is revised for grammatical and technical consistency and to clarify the citations.

Y. Manifest Form Requirements For Permitted Treatment Facilities.

Y(1) is revised for grammatical consistency.

Y(2) is revised for clarity of language.

Y(2)(a) is revised for internal grammatical consistency.

Y(2)(b) is revised for internal grammatical consistency.

Y(2)(c) is revised for internal grammatical consistency.

Y(3) is revised for clarity and grammatical consistency.

Y(4) is revised for grammatical consistency.

Y(4)(f) is revised to explain what the representative is certifying.

Y(4)(g) is revised to allow for the possibility that the manifest is present but incorrect or that the treatment facility representative does not know the reason behind the manifesting issues.

Z. Reporting For Permitted Treatment Facilities.

Z(1) is revised to specify where in the Act the fees for permitted treatment facilities can be found.

Z(2) is revised for grammatical consistency.

Z(2)(a) is revised to clarify the requirement that permitted treatment facilities report the amount of waste accepted from each state rather than a total accepted and a list of those states.

AA. Inspections and Record Keeping.

AA(1) is revised for grammatical consistency.

AA(2) is revised to require facilities provide required documentation within 5 business days of a request and for grammatical consistency.

AA(3) is revised to reduce redundancy and for grammatical consistency.

AA(4) is revised to reduce redundancy and for grammatical consistency.

BB. Enforcement.

BB(1) is revised for grammatical and formatting consistency.

BB(2) is revised to reduce redundancy .

BB(2)(c) is revised for clarity of language.

CC. Variances.

CC(1) is revised to specify that variance requests must be written and that they may include more information than that required.

CC(1)(a) is revised for internal grammatical consistency.

CC(1)(b) is revised for internal grammatical consistency.

CC(1)(c) is revised for internal formatting and grammatical consistency.

CC(2) is revised to clarify the requirements for variance renewal requirements.

DD. Fees ~~Section~~.

"Section" is deleted from the title for formatting consistency. Language is revised for formatting consistency and moved for stylistic consistency.

EE. Appeals.

This section is deleted to be consistent with Department policy.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons are provided an opportunity to submit written comments on the proposed Regulation by writing to David Scaturo by mail at Division of Waste Management, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; by facsimile at (803) 898-0391; or by email at infectiouswaste@dhec.sc.gov. To be considered, comments must be received no later than 5:00 p.m. on October 24, 2016, the close of the public comment period. Comments received will be submitted in a Summary of Public Comments and Department Responses for the Board of Health and Environmental Control's consideration at the public hearing.

Interested members of the public and regulated community are invited to make oral and/or written comments on the proposed amendments of R.61-105 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on December 8, 2016. The Board will conduct the public hearing in the Board Room, Third floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, South Carolina 29201. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda published by the Department twenty-four (24) hours in advance of the meeting at the following address: http://www.scdhec.gov/Agency/docs/AGENDA.PDF. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street entrance and register at the front desk.

Copies of the proposed amendments for public comment as published in the *State Register* on September 23, 2016 may be obtained online in the DHEC Regulation Development Update at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/. Click on the Land and Waste Management topic and scan down to the proposed amendments of R.61-105. A copy can also be obtained by contacting Susan Jenkins at the above address or by email at infectiouswaste@dhec.sc.gov.

Preliminary Fiscal Impact Statement:

The proposed Regulation has no anticipated substantial fiscal or economic impact on the State or its political subdivisions. Implementation of these regulation amendments will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or State Government due to any inherent requirements of these proposed amendments.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Sections 1-23-115(C)(1)-(3) and (9)-(11) and 1-23-110(3)(h).

DESCRIPTION OF REGULATION: Proposed amendment of Regulation 61-105, Infectious Waste Management Regulation (R.61-105).

Purpose: These amendments seek to provide greater protections for the public, remove any perceived uncertainty with respect to existing provisions, and ensure consistency with U.S. Department of Transportation regulations.

Legal Authority: The legal authority for R.61-105 is 1976 Code Sections 44-93-10 *et seq.*

Plan for Implementation: The proposed amendments will take effect upon approval by the S.C. General Assembly and publication in the *State Register*. An electronic copy of R.61-105, which includes these latest amendments, will be published on the Department's Regulation Development website at: http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations. At this site, click on the Land and Waste category and scroll down to R.61-105. Subsequently, this Regulation will be published on the S.C. Legislature website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION AND EXPECTED BENEFITS:

The proposed amendments are needed to realize the following anticipated benefits:

1. The Department proposes to amend R.61-105 to require facilities that qualify for permit by rule to notify the Department of the type of treatment they will utilize and the requirements will be clarified for any waste facilities that are treating waste and then sending it offsite for further treatment. This will reduce the burden on these facilities while providing more information to the program about how waste is being treated in the State.

2. The Department proposes to amend R.61-105 to include body art facilities (tattoo and body piercing) in the types of facilities that generate infectious waste. According to Health Licensing Regulations S.C. Regulation 61-109, Standards for Permitting Body Piercing Facilities and S.C. Regulation 61-111, Standards for Licensing Tattoo Facilities, these facilities must meet the requirements of this Regulation. They are added to the definition of regulated infectious waste in this Regulation for consistency.

3. The Department proposes to amend R.61-105 to include a timeframe for records to be provided to the Department after an inspection. The program allows some flexibility for generators to provide paperwork if the primary contact is unavailable or records are stored offsite but wants to maintain consistency between inspectors for the timeframe for those records to be provided.

4. The Department proposes to amend R.61-105 to add timeframes to the requirements for variances and alternative treatment technology approvals, including expiration and opportunities for renewal. The program intends for these approvals to be reviewed periodically to provide opportunities to review changes to technology and best industry practices. This will allow the program to set these timeframes while still allowing facilities the opportunity to renew approvals if they so desire.

5. The Department proposes to amend R.61-105 to allow better communication with facilities and tracking of facilities. A requirement that facilities provide an email address will allow cheaper and more consistent communication with the regulated community. The requirement that facilities provide their Employer Identification Number is to provide consistency with Department standards.

6. The Department proposes to amend R.61-105 to revise and clarify annual reporting requirements for treatment facilities to require amounts of waste treated to correspond to the state of origin. This will provide information to the Department about how much waste from out of state is being sent to South Carolina for treatment. Facilities that treat waste through steam sterilization will be required to record the pressure during the treatment process as well as having the pressure gauge calibrated annually. These records are already required for temperature and are already being provided by the permitted treatment facility in the State.

7. The Department proposes to amend R.61-105 to ensure consistency with Department of Transportation regulations. These include marking and packaging requirements, exemptions for materials of trade, certain non-commercial transport, and transporter insurance requirements.

8. The Department proposes to amend R.61-105 to give protocol requirements for generators more specificity. The Regulation requires that regular generators have a protocol. The program intends to provide guidance about what should be included in that protocol.

9. The Department proposes to amend R.61-105 to clarify demonstration of need requirements and make them more consistent with those of other similar programs.

10. The Department proposes to amend R.61-105 to clarify the definition(s) and requirements for storage of waste. There are certain types of containers that are appropriate for waste collection but not storage. The amendments clarify this distinction.

11. The Department proposes to amend R.61-105 to revise financial assurance documentation requirements to better protect the Department and South Carolina residents. The amendments clarify this language adds the requirement that a facility will not receive a final permit until financial assurance coverage is in place.

12. The Department proposes to amend R.61-105 to update the standards for waste treatment technologies. These technologies are always being studied and upgraded. The amendments give treatment facilities the flexibility to utilize the most up-to-date technologies and practices while still requiring thorough treatment.

13. The amendments allow transporters to only disinfect their vehicles once a day, while still requiring immediate disinfection of visible debris and now requiring a log to be kept of disinfection. The requirement that transporters submit training documentation annually is removed, as inspectors check for these records during regular inspections.

14. The Department proposes to amend R.61-105 to revise requirements for handling product of conception waste and add specific requirements for treatment and documentation relating to this waste.

15. The Department proposes to amend R.61-105 to make stylistic changes to include corrections for internal consistency, clarification, references, codification, and spelling to improve the overall text of the Regulation, as well as to add or clarify definitions of terminology used in the Regulation.

16. The Department proposes to amend R.61-105 to add a table of contents.

The above amendments are reasonable to realize the above benefits because they provide an efficient procedure without any anticipated cost increase, provide clear standards and criteria for the regulated community, and support Department goals.

DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated increased costs to the state and its political subdivisions associated with the implementation of these amendments. The proposed changes in the Regulation affect operational procedures by regulated facilities and would protect public health and the environment. There may be some increased costs for generators who were not packaging waste to meet U.S. Department of Transportation requirements. There are no other anticipated increased costs to generators.

There would be anticipated savings to transporters who would no longer have to disinfect their cargo-carrying body if more than one load of waste is carried per day. There also may be savings to governmental bodies transporting waste, due to exemptions by U. S. Department of Transportation. There may be an increased cost to transporters to purchase a log to record disinfection of the cargo-carrying body.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State, its political subdivisions, or the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed amendments to R.61-105 seek to support the Department's goals relating to protection of the environment and public health through the anticipated benefits highlighted above.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If these amendments are not implemented, possible detrimental effects on the environment and public health include failure to realize the anticipated benefits highlighted above.

Statement of Rationale:

The Department proposes amending R.61-105, Infectious Waste Management to provide greater protections for the public, remove any perceived uncertainty with respect to existing provisions, and ensure consistency with U.S. Department of Transportation regulations.

Text:

Text: Due to numerous revisions, R.61-105 will be replaced in entirety.

Legend: Underlined text = new text.
~~Strikeout text~~ = text being deleted

(Statutory Authority: 1976 S.C. Code ~~§§~~ Section 44-93-10 et seq. ~~; 44-93-100 (Act 351, July 20, 2002)~~

TABLE OF CONTENTS

SECTION

A. Purpose and Scope.

(1) The purpose of this ~~regulation~~Regulation is to establish a program to carry out the provisions of the South Carolina Infectious Waste Management Act, Act Number 134 of 1989, Chapter 93 of Title 44 of the 1976 Code of Laws, as amended.

(2) This ~~regulation~~Regulation shall apply to infectious waste management as defined in 44-93-20 of the Act and as further defined herein, that is generated, stored, contained, transferred, transported, treated, destroyed, disposed, or otherwise managed within South Carolina.

(3) Generators, transporters, owners/operators of intermediate handling facilities, ~~and~~ or treatment facilities, ~~or~~ and any other persons who generate, store, contain, transport, transfer, treat, destroy, dispose, or otherwise manage infectious waste in South Carolina shall comply with:

(a) this ~~regulation.~~Regulation;

~~(4) In addition to the requirements of this regulation,~~ (b) all other applicable requirements of the Department of Health and Environmental Control ~~shall be met.~~; and

~~(5) In addition to the requirements of this regulation, generators, transporters, owners/operators of intermediate handling facilities and treatment facilities, or any other person shall comply with~~ (c) applicable Federal, State, county, and local rules, regulations, and ordinances.

B. Severability.~~—~~

If any section, subsection, phrase, clause, or portion of this ~~regulation~~Regulation, or the applicability to any person, is adjudged to be unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining portions of this ~~regulation~~Regulation shall not be affected.

C. Use of Number and Gender.~~-~~

As used in this ~~regulation~~Regulation:

(1) ~~W~~words in the masculine gender also include the feminine and neuter genders; ~~and~~

(2) ~~W~~words in the singular include the plural; ~~and~~

(3) ~~W~~words in the plural include the singular~~.~~; and

(4) ~~W~~words have common dictionary meaning unless otherwise specified.

D. Definitions.

(1) Definitions carry common dictionary meanings unless otherwise specified. When used in this ~~regulation~~Regulation the following words have the meaning given below~~:~~.

(a) "Act" means the S. C. Infectious Waste Management Act, Act Number 134 of 1989, Chapter 93 of Title 44 of the Code of Laws of 1976, as amended.

(b) "Alternate treatment technology" means any treatment technology not specifically defined in this Regulation, a combination of treatment technologies defined in this Regulation, or a combination of a treatment technology defined in this Regulation and a processing technology (a technology that alters, converts, or reduces size of the infectious waste without treating; e.g., shredding, screening, crushing, straining, grinding, magnetic separation).

(~~b~~c) "Board" means the South Carolina Board of Health and Environmental Control which is charged with the responsibility for implementation of the Infectious Waste Management Act.

(~~c~~d) "Certification" means a signed statement of professional opinion based upon knowledge and belief.

~~(d~~e) ~~"CFR" means the Code of Federal Regulations.~~ ~~—~~(e) "Closure" means the~~ point in time at which facility owners or operators discontinue operation by ceasing to accept, treat, store, or dispose of infectious waste~~ discontinuance of operation by ceasing to accept, treat, store, or dispose of infectious waste in a manner that eliminates the need for further maintenance and/or management and protects human health and the environment.

~~(f) "Commissioner" means the Commissioner of the Department or his authorized agent.~~

(~~g~~f) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise managed.

~~(h) "Containment" means the packaging of infectious waste or the containers in which infectious waste is placed.~~ (~~i~~g) "Contingency Plan" means a document setting out an organized, planned, ~~and~~ coordinated, and technically and financially feasible course of action to be followed in case of a fire, flood, explosion, or release of infectious waste or infectious waste constituents, or interruption of normal procedures of infectious waste management including alternate treatment, storage, and/or disposal sites.

(h) "Demonstration of need" means the process through which a facility satisfies all of the requirements of Section W(1)(a) through(d). The dictionary or common meaning of "need" is not applicable for the purposes of this Regulation.

(~~j~~i) "Department" means the South Carolina Department of Health and Environmental Control, including personnel of the Department authorized by the Board to act on behalf of the Department or the Board.

~~(k) "Destination facility" means an infectious waste treatment facility which has received a permit from the Department in accordance with this regulation or an appropriate out-of-state facility and which is the facility designated by the generator to which waste is to be transported.~~ (~~l~~j) "Director" means the Director of the Department or his/her authorized agent.

(~~m~~k) "Discharge" or "infectious waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of infectious waste into or onto any land or waters of the State, including groundwater.

(~~m~~l) "Dispose" means to discharge, deposit, inject, dump, spill, leak, or place any waste into or on any land or water, including groundwater, so that the substance ~~may~~ has the potential to enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(m) "Donate" means to transfer in exchange for no valuable consideration other than reasonable costs associated with transportation, implantation, processing, preservation, quality control, and/or storage.

(n) "EPA" means the U~~.~~nited S~~.~~tates Environmental Protection Agency.

~~(o) "EPA identification number" means the EPA assigned Medical Waste Identification Number.~~
~~(p) "Existing facility" means a facility which was in operation under permits issued by the Department on June 8, 1989.~~ (~~q~~o) "Expand" means ~~an~~to increase ~~in~~ the capacity of ~~the~~a facility or ~~an~~to increase ~~in~~ the permitted quantity of infectious waste ~~received by a facility that exceeds a permit condition~~treated.

(~~r~~p) "Facility" means a location or site within which infectious waste is treated, stored, and/or disposed of.

~~(s) "Final closure" means the closure of all infectious waste management units at the facility in accordance with all applicable closure requirements so that infectious waste management activities are no longer conducted at the facility.~~
~~(t) "Free liquids" means liquids which separate readily from the portion of a waste under ambient temperature and pressure.~~ (~~u~~q) "Generator" means the person producing infectious waste except waste produced in a private residence.

(~~v~~r) "Generator facility" means a facility that generates and treats infectious waste ~~that~~and is owned or operated by a combination or an association of generators, a nonprofit professional association

representing generators, ~~or~~ a nonprofit corporation controlled by generators, a nonprofit foundation of hospitals, or nonprofit corporations wholly owned by hospitals, if the waste is generated in this State and treatment is provided on a nonprofit basis.

(~~w~~s) "Generator Registration Status" means classification of a ~~facility that generates regulated infectious waste~~generator (e.g., small quantity generator), based on the largest amount of infectious waste generated, documented ~~by~~ in weight records, in any one calendar month of the last 12 (twelve) consecutive calendar months.

(~~x~~t) "Hazardous waste" means a ~~Resource Conservation and Recovery Act (RCRA)~~ hazardous waste as defined in ~~R.61-79.~~Section 261.3 of ~~the~~ S.C. Regulation 61-79, Hazardous Waste Management Regulations.

(~~y~~u) "Infectious waste" ~~or "waste"~~ means any material as defined in Section E of this ~~regulation~~Regulation. If 'waste' is not modified by any other descriptor (e.g., hazardous, radioactive), it refers to 'infectious waste'.

(~~z~~v) "Infectious waste management" means the systematic control of the collection, source separation, storage, transportation, treatment, and disposal of infectious waste.

(~~aa~~w) "Intermediate handling facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of infectious waste are held and/or handled for storage during the normal course of transportation and may be off loaded and on loaded into fixed storage.

(~~bb~~x) "Manifest" means the shipping document authorized and signed by the generator ~~which contains the~~that lists information required ~~by~~ in this ~~regulation~~Regulation.

(~~cc~~y) "Offsite" means not ~~onsite~~ on the site.

~~(dd) "Onsite" means the same or geographically contiguous property which may be divided by public or private right-of-way provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way.~~

(~~ee~~z) "Person" means an individual, partnership, co-partnership, cooperative, firm, company, public or private corporation, political subdivison, agency of this State, county, or local government, trust, estate, joint structure company, or any other legal entity or its legal representative, agent, or assigns.

(aa) "Planning radius" means the area around a treatment facility that is used for determining the need for new facilities and expansions of existing facilities.

(~~ff~~bb) "Products of conception" means fetal ~~tissues~~ and embryonic tissues resulting from implantation in the uterus.

(~~gg~~cc) "Pump Event" means any action where treatment residue is removed from a tank as described in Section S of this Regulation~~holding treatment residue~~.

(~~hh~~dd) "Radioactive material" means any and all equipment or materials ~~which~~that are radioactive or have radioactive contamination and ~~which~~ that are required pursuant to any governing laws, regulations, or licenses to be disposed of or stored as radioactive material.

(~~ii~~ee) "Release" means to set free from restraint or confinement or the occurrence of waste becoming unrestrained or unconfined.

~~(jj) "Secured area" means an area which is fenced with a locking gate or which is regularly patrolled by security personnel which prevents access by the general public. An area which has controlled access and barriers to prevent exposure of the general public.~~ (~~kk~~ff) "Site" means contiguous land, structures, and other appurtenances and improvements on the land used for generating, treating, storing, transferring, or disposing of regulated infectious waste ~~with~~that are under the same ownership. If the transport of waste between any two (2) generators is subject to federal or state transportation regulations, the generators are considered separate sites.

(~~ll~~gg) "Small quantity generator" means any in-state generator that produces less than fifty (50) pounds of infectious waste per calendar month.

(~~mm~~hh) "Solid waste" means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agriculture operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to ~~NPDES~~ National Pollutant Discharge Elimination System permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

(~~nn~~ii) "State" means the ~~S~~state of South Carolina.

(~~oo~~jj) "Storage" means the actual or intended holding of infectious wastes or treatment residues either on a temporary basis or for a period of time, in a manner as not to constitute disposing of the wastes.

(~~pp~~kk) "Supersaturated" means ~~the condition when~~ any absorbent material ~~contains enough fluid so that it freely drips that fluid or if lightly squeezed, that fluid would drip from it~~.that drips or, if compressed, would drip or release fluid.

(~~qq~~ll) "Transfer facility" means any transportation related facility where shipments of infectious waste are held during the normal course of transportation including storage in fully-enclosed, leak-resistant portable storage unit(s) that do not have a permanent foundation or footing (e.g., cargo containers, storage containers, truck trailers, construction trailers, bulk solid waste containers), but are not off-loaded or on-loaded into fixed storage areas.

~~(rr) "Transport" means the movement of infectious waste from the generation site to a treatment facility or site for intermediate storage and/or disposal.~~ (~~ss~~mm) "Transporter" means a person ~~engaged in the offsite transportation of~~ who transports infectious waste by air, rail, ~~highway~~road, or water.

(~~tt~~nn) "Transport vehicle" means ~~a method~~ a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (e.g., trailer, railroad freight car~~, etc.~~) is a separate transport vehicle.

(~~uu~~oo) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of infectious waste so as to sufficiently reduce or eliminate the infectious nature of the waste.

(~~vv~~pp) "Treatment facility" means a facility ~~which~~ that treats infectious waste to sufficiently reduce or eliminate the infectious nature of the waste.

(~~ww~~qq) "Treatment residue" means the solid or liquid part that remains after infectious waste has been treated to sufficiently reduce or eliminate the infectious nature of the waste.

(rr) "Trust agreement" means a formal document, duly executed and notarized, which vests the rights of a facility of one or more of its assets in the Department in order for the Department to protect the health and safety of the public or the environment.

(~~xx~~ss) "Universal biohazard symbol" means the ~~symbol design that conforms to the design shown in the federal Occupational Safety and Health Administration (OSHA) Standards~~symbol that is universally recognized as a warning against substances that pose a threat to the health of living organisms, primarily that of humans, and is also the symbol shown in the federal Occupational Safety and Health Administration Standards.

(tt) "U.S. DOT" means the United States Department of Transportation.

(uu) "USPS" means the United States Postal Service.

E. Definition of Infectious Waste.

(1) An infectious waste is any used material ~~which~~ that is: generated in the health care community in the diagnosis, treatment, immunization, or care of human beings; generated in embalming, autopsy, or necropsy; generated in research pertaining to the production of biologicals ~~which~~ that have been exposed to human pathogens; generated in research using human pathogens; generated in body piercing as regulated pursuant to S.C. Regulation 61-109, Standards for Permitting Body Piercing Facilities; or generated in tattooing as regulated pursuant to S.C. Regulation 61-111, Standards for Licensing Tattoo Facilities, ~~and~~ ~~which~~ that is not excluded in E(2) below and ~~which~~ that is listed in the following categories ~~below:~~.

(a) Sharps. Any discarded article that may cause puncture or cuts~~, including but not limited to:~~ (e.g., needles, syringes, Pasteur pipettes, lancets, broken glass or other broken materials, ~~and~~ scalpel blades).

(b) Microbiologicals. Specimens, cultures, and stocks of human pathogenic agents, ~~including but not limited to:~~ (e.g., waste ~~which~~ that has been exposed to human pathogens in the production of biologicals; discarded live and attenuated vaccines; ~~and~~ discarded culture dishes/devices used to transfer, inoculate, and mix microbiological cultures).

(c) Blood and Blood Products. All waste unabsorbed human blood, or blood products, or absorbed blood when the absorbent is supersaturated~~, including but not limited to:~~ (e.g., serum, plasma and other components of blood, ~~and~~ visibly bloody body fluids such as suctioned fluids, excretions, and secretions).

(d) Pathological Waste. All tissues, organs, limbs, products of conception, and other body parts that have been removed from the whole body~~, excluding tissues which have been preserved with~~

~~formaldehyde or other approved preserving agents, and the~~. All bodily fluids ~~which~~ that may be infectious due to bloodborne pathogens~~. These body fluids are:~~, i.e., cerebrospinal fluids, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, semen, ~~and~~ vaginal/cervical secretions, and any other bodily fluid that is visibly bloody. All tissues and bodily fluids (e.g., blood) resulting from the termination of a pregnancy.

(e) Contaminated Animal Waste. ~~A~~Contaminated animal waste includes animal carcasses, body parts and bedding ~~when the~~ of an animal that has been intentionally exposed to human pathogens in research or in the production of biologicals.

(f) Isolation Waste. ~~All~~Isolation waste includes waste generated from ~~communicable disease isolation of the Biosafety Level 4 agents, highly communicable diseases, pursuant to the `Guidelines for Isolation Precautions in Hospitals', published by the Centers For Disease Control.~~dangerous and/or exotic agents that pose a high risk of life-threatening disease, may be transmitted by the aerosol route, and for which there is no vaccine or therapy.

(g) Other Waste. Any other material designated by written generator policy as infectious~~, or any other material designated by a generator as infectious by placing the material into a container labeled infectious as outlined in Section J. Any solid waste which is mixed with infectious waste becomes designated as infectious and must be so managed unless expressly excluded in 2 (c) below~~. Any solid waste that is unintentionally mixed with infectious waste is designated as infectious and shall be managed as such unless expressly excluded in E(2)(a) through (c) of this Regulation.

(h) Infectious Waste Residues Resulting from Discharges. ~~A~~Infectious waste residue includes any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of ~~any~~ infectious waste.

(2) The following are excluded from the definition of infectious waste:

(a) ~~Hazardous~~hazardous waste ~~which~~ that is required to be managed pursuant to ~~the Hazardous Waste Management Regulations, R.~~ S.C Regulation 61-79, as amended, et seq.;

(b) ~~Radioactive~~radioactive material ~~which~~that is required to be managed pursuant to ~~the Department~~ S.C. Regulation 61-63, Radioactive Materials (Title A)~~.~~;

(c) ~~Mixed~~mixed waste containing regulated quantities of both ~~RCRA~~ hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended, ~~are~~that is to be managed pursuant to all applicable regulations~~.~~;

(d) ~~Infectious wastes~~infectious waste generated in a private residence except when determined by the ~~Commissioner~~ Director to be an imminent or substantial hazard to public health or the environment~~.~~;

(e) ~~Etiologic~~etiologic agents or specimens being transported for purposes other than disposal to a laboratory consistent with ~~shipping and handling~~ requirements of the ~~U.S. Department of Transportation~~U.S. DOT~~,~~ and the U.S. Department of Health and Human Services~~, and all other applicable requirements~~ (e.g., shipping requirements, handling requirements)~~.~~;

(f) ~~Human~~human remains, corpses, ~~remains,~~ products of conception, and anatomical parts that are intended to be interred, cremated, or donated for medical research. Teeth ~~which~~ that are returned to a patient~~.~~;

(g) ~~Infectious~~infectious waste samples transported offsite by the EPA or the Department for possible enforcement actions or transportation of materials from other governmental response actions~~.~~; and

(h) pathological waste that has been preserved with formaldehyde or another approved preserving agents.

(3) The Department will determine how individual waste fits into the definitions and/or categories.

F. Generator Requirements.

(1) All in-state generators of infectious waste shall register in writing with the Department ~~in writing~~ on a Department approved form. Registration will be in a manner prescribed by the Department. At a minimum, ~~R~~registration notices will include ~~at a minimum~~:

(a) name of the business;

(b) name of the owner and responsible party, if different;

(c) physical location of the site ~~of~~ where waste is generated (each site of waste generat~~ed~~ion ~~must~~shall apply separately);

(d) mailing address of the site ~~of generation~~where waste is generated;

(e) telephone number of the site where waste is generated;

(f) a contact name of the site's infectious waste coordinator(s);

(g) the categories and corresponding amount of infectious waste generated ~~annually~~monthly (estimated within plus or minus (+ or -) twenty (20) percent)~~.~~;

(h) the method of waste treatment and disposal; ~~and~~

(i) ~~the Employer Identification Number (EIN).~~an email address of the generator or the infectious waste coordinator (if available);

(j) the Employer Identification Number (EIN);

(k) the name of the transporter that will pick up the site's infectious waste (if applicable); and

(l) the infectious waste transporter registration number of the transporter that will pick up the site's infectious waste (if applicable).

(2) ~~When~~ If any changes occur in the information required in Section F(1) above, the Department ~~must~~shall be notified in writing of such changes within thirty (30) days of the change.

(3) Renewal of registration will be every three (3) years for all generators. Registered generators will be notified in writing by the Department of renewal requirements ~~by the Department~~. At the time of renewal, ~~F~~facilities that store liquid treatment residue in holding tanks ~~must~~shall submit records showing monitoring and pump events for the previous twelve (12) consecutive calendar months.

(4) Fees for registration will be due at the time of initial registration and annually thereafter. Fees will be assessed in accordance with Section DD below based on the generator~~'s~~ registration status.

(5) Each generator, except small quantity generators, ~~must~~shall have a designated infection control committee or coordinator with the authority and responsibility for infectious waste management.

(a) This committee or coordinator ~~must~~shall develop or adopt a written protocol to manage the infectious waste stream from generation until offered for transport. ~~If the generator treats infectious waste onsite, the written protocol must include contingency plans and a Quality Assurance program to monitor these onsite treatment procedures. Small quantity generators are not required to have an infection control committee or a written protocol.~~

(b) The protocol shall detail procedures that will facilitate compliance with all applicable regulatory requirements, including packaging, labeling, storage, and manifesting.

(c) If the generator treats infectious waste onsite, the written protocol shall include a contingency plan, as defined in this Regulation, and a quality assurance program to monitor onsite treatment procedures.

(6) Each generator ~~must~~shall:

(a) segregate infectious waste from other types of waste at the point of generation;

(b) ~~assure~~ ensure proper packaging and labeling of waste that is to be transported offsite as required in Section I and J, respectively, of this ~~regulation~~Regulation;

(c) ensure initiation of a manifest ~~is initiated~~ if waste is to be transported offsite as outlined in Section M of this ~~regulation~~Regulation;

(d) prevent infectious waste ~~containing~~ that contains radioactive material, ~~which is~~ distinguishable from background levels of radiation, from leaving the site ~~of generation~~where waste is generated when the material is under the jurisdiction of the United States Nuclear Regulatory Commission or an Agreement State;

(e) maintain records as required ~~by this regulation~~ in Section AA of this Regulation;

(f) store waste as outlined in Section K of this ~~regulation~~Regulation;

(g) manage infectious waste in a manner ~~which~~ that prevents exposure to the public or ~~release to the environment~~discharge; ~~and~~

(h) treat infectious waste onsite or transport offsite for treatment at a permitted treatment facility;

(i) offer infectious waste for ~~offsite~~ transport offsite only to a transporter who maintains a current registration with the Department or to the ~~U.S. Postal Service~~USPS or another parcel delivery service; ~~and~~

(j) ~~Obtain and record accurate weight of waste within fifty (50) days of shipment. Unabsorbed liquid waste produced during the embalming process is exempt from this requirement.~~obtain or document accurate weight of infectious waste generated and maintain this record as required in Section AA of the Regulation. If waste is treated onsite, the weight shall be recorded at the time of treatment. If waste is

offered for transport, the weight shall be obtained within fifty (50) days after shipment. Unabsorbed liquid waste produced during the embalming process is exempt from this requirement; and

(k) ensure that products of conception are incinerated, except as exempted in E.2.f above., (e.g., label waste containers with the word 'incinerate', include incineration as a special handling instruction or as additional information on the manifest).

(7) When a waste generator relocates, closes, or ceases to generate infectious waste, the generator ~~must~~shall, ~~within thirty (30) days, dispose of~~ transport or treat all infectious waste and treatment residue in accordance with this ~~regulation~~Regulation and notify the Department ~~must be notified~~ of the closure or cessation in writing within thirty (30) days.

(8) A registered generator of infectious waste may accept non-regulated infectious waste generated in a private residence, but once accepted, the generator shall assume full responsibility of generation and manage the waste according to this and all applicable regulations.

(9) It is unlawful for any person to release infectious waste or treatment residue into the environment of this State, except as permitted by the Department. If a release of infectious waste or treatment residue to the environment is known or suspected, the facility shall immediately investigate and confirm all suspected releases and report the findings to the Department within twenty-four (24) hours. Additional action may also be required by local, state, or federal officials to ensure that the infectious waste or treatment residue discharge does not present an actual or potential hazard to human health or the environment.

(10) For products of conception that are donated for medical research, the donating party shall:

(a) create a record on a Department approved form. The record shall include, at a minimum:

(i)the amount in pounds of the products of conception donated;

(ii) the date the products of conception were donated; and

(iii) an assurance signed by an authorized representative of the donating party, which states that the products of conception were, or will be, donated for medical research to a specified party. The assurance shall also attest that no payment involved exceeds, or will exceed, reasonable costs associated with the transportation, implantation, processing, preservation, quality control, and/or storage of the products of conception; and

(b) maintain a record of the donation for the period of time specified in Section AA(2) below.

G. Small Quantity Generators.

(1) All in-state small quantity generators, as defined in Section D of this Regulation, ~~must~~shall comply with the provisions of Section E; Section F~~, Parts~~ (1)~~-~~ through (3), and ~~Section F~~(6)~~-~~ through (~~8~~10)above; and~~ the following~~:

(a) shall manage sharps, microbiological cultures, products of conception, and human blood and blood products ~~must be managed~~ pursuant to this ~~regulation~~Regulation including but not limited to: packaging, labeling, storage, treatment, and weight generation rate requirements; and

(b) ~~small quantity generators~~ may dispose of all other infectious waste as solid waste after properly packaging to prevent exposure to solid waste workers and the public.

(2) Small quantity generators may transport their own waste without registering with the Department as a transporter, provided the waste meets the U.S. DOT requirements as a material of trade.~~Generators who qualify as small quantity generators, as defined above, may transport their own waste provided:~~

~~(a) they never transport more than fifty (50) pounds at any one time;~~

~~(b) the vehicle is identified as required in Section Q(1)(g);~~

~~(c) the waste is manifested as required in Section M;~~

~~(d) the waste is packaged and labeled as required in Section I and Section J; and~~

~~(e) the waste is not transported in the passenger compartment of the vehicle and is in a fully enclosed compartment which protects the container from weather conditions which would compromise the integrity of the container.~~

(3) If a small quantity generator offers infectious waste ~~for transport offsite for treatment at a destination facility~~to a registered transporter, the USPS, or other parcel delivery service, the waste ~~must~~shall be managed pursuant to Sections H through DD of this ~~regulation~~Regulation.

(4) If ~~in any calendar month~~ fifty (50) pounds or more of infectious waste ~~or more~~ is produced in any calendar month, the generator ~~must~~shall notify the Department in writing; manage infectious waste pursuant to the entire ~~regulation~~Regulation; and pay the annual fee as outlined in Section DD of this ~~regulation~~Regulation. ~~–~~A generator will be able to claim designation as a small quantity generator after submitting documentation demonstrating twelve (12) consecutive calendar months of waste production less than fifty (50) pounds, or if at the time of registration, the generator estimates that less than fifty (50) pounds a month will be generated.

H. Segregation Requirements. ~~Generators shall segregate infectious waste from solid waste as close to the point of generation as practical~~

(1) In order to avoid commingling of ~~the~~ waste, generators shall segregate infectious waste from other types of waste as close to the point of generation as practical. ~~If infectious waste is put in the same container as other waste, or if solid waste is put into a container labeled as infectious waste, the entire contents of the container shall be managed as infectious waste unless hazardous and/or radioactive material regulations apply, then the most stringent regulations apply as outlined in Section E (2) (a), (b), and (c).~~

(2) If infectious waste is packaged with or put in the same container as other types of waste, the entire contents of the container shall be managed as infectious waste unless hazardous and/or radioactive material regulations apply, then the most stringent regulations apply as outlined in E(2)(a) through (c) of this Regulation.

(3) If solid waste is unintentionally packaged with or placed into a container containing infectious waste or labeled as infectious waste, the entire contents of the container shall be managed as infectious waste unless hazardous and/or radioactive material regulations apply, then the most stringent regulations apply as outlined in E(2)(a) through (c).

I. Packaging Requirements.

(1) ~~Generators shall assure that infectious~~Infectious waste ~~is~~shall be packaged in accordance with the requirements of this section and in a manner to prevent any release of infectious waste from its packaging before storing, transporting, or offering for transport offsite. ~~–~~Absorbents may be used to aid in the

prevention of releases. Waste intended to be transported by the ~~U.S. Postal Service~~USPS or other parcel delivery service ~~must~~shall meet the packaging requirements for infectious ~~waste~~substances in ~~the Domestic Mail Manual~~applicable USPS laws, regulations, and standards and the requirements of this Section.

(2) All sharps shall be placed and maintained in rigid, leak resistant, ~~and~~ puncture resistant containers ~~which are secured tightly to preclude loss of the contents and which are~~ that are designed for the safe containment of sharps.

(3) All ~~other types~~ categories of infectious waste, except as described in I(2), ~~must~~shall be placed, stored, and maintained before and during transport in a rigid or semi-rigid, leak resistant container ~~which~~ that is impervious to moisture.

(4) Containers ~~must~~shall have sufficient strength to prevent bursting and tearing and withstand handling, storage, transfer, or transportation without impairing the integrity of the container.

(5) Containers ~~must~~shall be ~~sealed and~~ closed and sealed tightly and securely, when full by weight or volume, or when putrescent, to prevent any discharge of the contents, at any time, until the container enters the treatment system.

(6) Plastic bags used ~~inside of containers~~to collect, store, or package infectious waste shall:

(a) be a red or orange color and

(b) have sufficient strength to prevent tearing.

(7) Roll-off containers, trailer bodies, or other vehicle containment areas cannot be used as rigid ~~containment~~containers.

(8) Infectious waste ~~must~~shall be contained in containers that are appropriate for the type and quantity of waste and ~~must~~shall be compatible with selected storage, transportation, and treatment processes.

(9) Reusable or disposable containers are acceptable. ~~–~~Reusable containers ~~must~~shall be properly disinfected after each use as outlined in Section L of this ~~regulation~~Regulation.

(10) Compaction of waste by any means shall be prevented prior to entering the containment of the treatment process.

~~(11) Exempt or excluded waste shall not be packaged as infectious waste. Waste packaged as infectious waste must be managed as infectious waste, except as indicated in Section I(12).~~

~~(12) When infectious waste is treated by a technology which does not change the appearance of the bag or outer container immediately after treatment, it shall be clearly labeled with the word "Treated" and the date of treatment on the outside of the container to indicate that the waste was properly treated. This labeling method may be hand-written, an indicator tape or chemical reaction. The labeling process shall be water-resistant and indelible.~~

J. Labeling of Containers.

(1) Generators and transporters ~~must assure~~ shall ensure that once sealed, containers of infectious waste are properly labeled in English as outlined in J(2) through (3) below.

(2) ~~Containers of infectious waste offered for transport offsite must be labeled on outside surfaces so that it is readily visible with:~~Containers of infectious waste intended to be offered for transport offsite shall be labeled with:

(a) ~~the universal biohazard symbol sign;~~required labeling, printing, or imprinting that is readily visible, indelible, and water-resistant;

(b) ~~the Department issued number of the in-state generator~~the universal biohazard symbol sign, if the container is not red;

(c) ~~a labeling process which is water-resistant and indelible; and~~the U.S. DOT Hazardous Materials label for an Infectious Substance, if the container is not labeled with the universal biohazard symbol sign;

(d) ~~the date the container was placed in storage or sent offsite, if not stored.~~the Department issued number of the in-state generator;

(e) the date the container was placed in storage or sent offsite, if not stored; and

(f) a communication indicating if there are special requirements (e.g., treatment method).

(3) Each bag used to ~~line the inside of an outer container shall~~collect, store, or package infectious waste shall be labeled, with indelible ink or imprinted, as outlined in J(2)(b) above~~(a) and (c)immediately above~~.

(4) Transporters ~~must~~shall label each outer container at the time it is accepted as specified in Section P-(2), including (a) through (c) of this Regulation.

(5) Transporters ~~must~~shall affix required labels so that no other required markings or labels are obscured.

(6) Abbreviations may not be used in required labeling except for the common dictionary standard abbreviations.

(7) When infectious waste is treated according to the requirements of this Regulation by a technology or process that does not change the appearance of the bag or outer container immediately after treatment,

(a) the outside of the waste bag or container shall be clearly labeled with the word "Treated" and the date of treatment;

(b) the labeling process (e.g., handwriting, indicator tape, adhesive label) shall be water-resistant and indelible; and

(c) if the person operating the treatment technology or process has a written agreement with the landfill accepting the treatment residue, the treatment residue is exempt from this labeling requirement.

K. Storage of Infectious Waste.

(1) Storage shall be in a manner and location ~~which~~ that affords protection from animals, vectors, ~~weather~~ adverse conditions (e.g., water, chemicals, fire, wind), theft, and vandalism and ~~which~~ that minimizes exposure to the public. Storage begins at the time the container is sealed.

(a) The waste ~~must~~shall not provide a food source or breeding place for insects or rodents.

(b) The waste ~~must~~shall be stored in a manner to prevent a loss of integrity of the packaging ~~protected to maintain the integrity of the packaging and provide protection from weather conditions such as water, rain, and wind~~.

(c) The waste ~~must~~shall be stored in a manner to prevent a release or discharge of the contents.

(d) Containers not designed to meet the packaging requirements of the U.S. DOT (e.g., small volume sharps containers, non-Packing Group II rated large volume sharps containers), shall not be stored without first packaging to meet those requirements.

(2) Outdoor storage areas ~~must~~shall be locked (~~for example:~~ e.g., roll-off containers, sheds, trailers, van bodies~~, or any other storage area~~).

(3) Storage areas ~~must allow access to authorized personnel only~~shall be managed to prevent access by unauthorized persons.

(4) Storage areas ~~must~~shall be labeled with the universal biohazard symbol sign.

(a) The symbol shall be of sufficient size to be readily visible.

(b) The sign shall be repaired or replaced when it no longer conveys an effective message (e.g., faded, damaged, missing letters).

(5) Infectious waste ~~must~~shall be maintained in a non-putrescent state, using refrigeration when necessary. Infectious waste determined to be putrescent shall be treated or sent offsite for treatment immediately.

(a) Generator onsite storage shall not exceed fourteen (14) days without refrigeration or thirty (30) days if maintained at or below forty-two (42) degrees Fahrenheit.

(b) If waste that is intended for offsite treatment is treated by the generator according to the treatment requirements of this Regulation, it shall be transported within fourteen (14) days after onsite treatment or thirty (30) days if maintained at or below forty-two (42) degrees Fahrenheit.

(~~b~~c) Once infectious waste leaves the generator site, the waste ~~must~~shall be delivered to a treatment facility within fourteen (14) days without refrigeration or thirty (30) days if maintained at or below forty-two (42) degrees Fahrenheit.

(~~c~~d) Treatment facility onsite storage shall not exceed fourteen (14) days at ambient temperature or thirty (30) days if maintained below forty-two (42) degrees Fahrenheit ~~and~~.

(6) All floor drains in storage areas ~~must discharge into~~ shall connect to a Department approved sanitary sewer system or be transported to a Department approved ~~sewerage~~wastewater treatment facility or to a permitted infectious waste treatment facility.

(7) All ventilation in storage areas ~~must~~ shall minimize human exposure and be in compliance with applicable Department air quality requirements ~~and minimize human exposure~~.

L. Disinfection Standards.

(1) Any material or surface ~~which~~ that comes in contact with infectious waste ~~must~~shall be disinfected prior to reuse.

(a) Reusable containers ~~which~~ that have been used to contain infectious waste ~~must~~shall be disinfected immediately after being emptied or treated along with the waste.

(b) ~~Vehicle bodies which have been used to store or transport infectious waste must be disinfected immediately after unloading.~~Cargo-carrying body disinfection requirements are listed below.

(i) Any cargo-carrying body that has been used to store or transport infectious waste shall be disinfected at least once each day of use.

(ii) Rented cargo-carrying bodies that have been used to store or transport infectious waste shall be disinfected immediately prior to returning them to the owner.

(c) ~~Spillage~~ Areas of visible contamination or spillage of infectious waste ~~must~~shall be disinfected immediately.

(d) A record of disinfection of cargo-carrying bodies shall be created. This record shall be maintained as required in Section AA of this Regulation.

~~(2) Disinfection can be accomplished by appropriate use of an EPA registered disinfectant used according to the label instructions at the tuberculocidal strength.~~ (~~3~~2) Drainage from decontamination processes ~~shall discharge~~shall connect to a Department approved sanitary sewer system or be transported to a Department approved sew~~er~~age treatment facility or permitted infectious waste treatment facility.

M. Manifest Form Requirements For Generators.

(1) A generator who transports, or offers for transport, infectious waste for offsite treatment, storage, or disposal, ~~must~~shall ensure~~prepare~~ a manifest is prepared. This manifest shall:

(a) ~~using~~be completed using DHEC Form 2116 or another Department approved form ~~and~~;

(b) be completed legibly~~filled out in a legible manner~~

(c) be completed according to the instructions ~~for that form.~~; and

(d) ~~The manifest form must~~ accompany the waste at all times after leaving the generator's facility.

(2) The manifest form, ~~will~~at a minimum, shall include~~, but is not limited to~~:

(a) the name of the generator;

(b) the Department identification number (if applicable);

(c) the address of the site where the waste was generated;

(d) a general description of the nature of the waste being shipped;

(e) the number of containers of waste;

(f) the weight or volume (accurate to within ten (10) percent) of the total amount of waste;

(g) a certification by the generator stating "This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation";

(h) a certification by the generator that the shipment does not contain regulated quantities of hazardous waste as defined by the S.C. Hazardous Waste Management Regulations 61-79;

(i) a certification by the generator that the shipment does not contain radioactive material or waste above levels determined outlined in Section F(6)(d) of this Regulation;

(j) the name of the transporter who is to receives the waste from the generator, or subsequent transporter, and that transporter's Department issued transporter registration number;

(k) the date the transporter accepted the shipment; and

(l) the date the treatment facility accepted the shipment onsite; a communication indicating if there are special requirements for waste handling (e.g., treatment method), if applicable.

(23) The generator who offers regulated infectious waste for transport offsite shall ensure a manifest is initiated as required in Section M(1) above.

(34) This The generator shall sign by hand or by another legally defensible signature where required in accordance with M(12)(g) through (i), (h), and (i)above.

(45) The generator shall retain one (1) copy of the manifest after the transporter has accepted the shipment.

(6) Infectious waste that meets the packaging requirements for infectious substances in applicable USPS laws, regulations, and standards and is transported by the USPS or other parcel delivery service is exempt from the requirements of this Section.

N. Infectious Waste Transporter Requirements.

(1) Transporters of infectious waste which that is generated, stored, transferred or treated within South Carolina the State mustshall be registered with the Department prior to such activity unless otherwise provided by in this regulationRegulation.

(2) Generators who transport their own infectious waste offsite, except those generators who qualify as small quantity generators in Section G of this regulationRegulation, mustshall also comply with all applicable transporter requirements of this regulationRegulation.

(3) Transporters of infectious waste mustshall comply with all applicable requirements of this regulationRegulation during transportation and when the waste is at a transfer facility.

(a) iInfectious waste may only be transferred from one vehicle to another only at a designated transfer facility; and.

(b) iInfectious waste may shall not be unloaded into fixed storage at a transfer facility.

(4) Transporters ~~must also~~ shall comply with the requirements of Sections I and J of this Regulation when ~~they~~ the transporter repacks defective boxes of infectious waste.

(5) Transporters ~~must also~~ shall comply with applicable requirements of this ~~regulation~~Regulation when ~~they~~the transporter:

(a) stores infectious waste, even in the course of transport, in which case the requirements of Section K ~~must~~shall be met;

(b) removes infectious waste from reusable containers; or

(c) repackages or ~~modify~~ modifies packaging of infectious waste.

(6) Transporters ~~must~~shall develop a written infectious waste management plan ~~which~~ that ~~must address~~ includes at a minimum:

(a) a spill plan;

(b) contingency plans ~~for alternate treatment, storage and/or disposal sites~~ as defined in this Regulation;

(c) handling and storage of waste; and

(d) personnel health and safety training procedures.

(7) ~~A draft of the~~ The plan required in Section N (6) of this Regulation ~~must accompany~~shall be submitted for review with the annual registration application.

~~(a) The plan must meet the approval of the Department or be modified so that it will meet approval.~~

(~~b~~a) After approval by the Department, the infectious waste management plan ~~shall~~ becomes part of the registration and ~~must~~shall be adhered to by the registrant.

(~~c~~b) Changes in this plan ~~must~~shall be made by submittal of a written request to the Department. ~~which may~~ This request will be approved or ~~deny such request~~denied by the Department in writing.

(8) Transporters shall prevent ~~discharge~~release of infectious waste from a transport vehicle into the environment.

(9) It is unlawful for any person to ~~discharge~~release infectious waste or treatment residue into the environment of this State except as permitted by the Department. If a release of infectious waste or treatment residue to the environment is known or suspected, the ~~facility~~ transporter ~~must~~shall immediately investigate and confirm all suspected releases and report the findings to the Department within twenty-four (24) hours ~~and immediately investigate and confirm all suspected releases. Action~~ Additional action may ~~then~~ also be required by local, state, or federal officials ~~so~~ to ensure that the infectious waste or treatment residue discharge does not ~~longer~~ presents an actual or potential hazard to human health or the environment.

~~(10) The Department may require transporters to clean up and/or disinfect any infectious waste discharge that occurs during transportation or take such action as may be required by state, federal, or~~

~~local officials so that the infectious waste discharge no longer presents a potential hazard to human health or the environment.~~

(~~11~~10) Transport vehicles containing infectious waste ~~must~~shall be managed to prevent access by unauthorized persons.

(~~12~~11) Containers of waste shall be loaded and unloaded so that no compaction or mechanical stress of the waste occurs during handling or transport.~~Reserved.~~

(12) Transportation of infectious waste in a vehicle operated onsite by a government employee solely for non-commercial governmental purposes is exempt from the requirements of Sections N through R of this Regulation.

O. Transporter Registration Requirements.

(1) Each transporter or transfer facility operator ~~must~~shall register with the Department on a form ~~which~~ that includes at a minimum:

(a) the ~~transporter's~~ name of the business;

(b) the name of the owner and responsible party, if different;

(c) the contact person's name:

(~~b~~d) the ~~transporter's~~ mailing address;

(~~c~~e) the name for each intermediate handling facility, transfer facility, or transportation-related site ~~that~~ where the transporter will operate ~~at~~ in ~~South Carolina~~the State;

(~~d~~f) the address for each intermediate handling facility, transfer facility, or transportation-related site ~~that~~ where the transporter will operate ~~at~~ in ~~South Carolina~~the State;

(~~e~~g) the telephone number for each intermediate handling facility, transfer facility, or transportation-related site ~~that~~ where the transporter will operate ~~at~~ in ~~South Carolina~~the State;

~~(f) proof of financial responsibility for sudden and accidental occurrences in the amount of at least one million dollars ($1,000,000) per occurrence exclusive of legal defense costs. This financial responsibility may be established by any one or a combination of the following:~~

~~(i) evidence of liability insurance, either on a claim made or an occurrence basis, with or without the deductible, with the deductible, if any, to be on a per occurrence or per accident basis and not to exceed ten (10) percent of the equity of the registrant;~~

~~(ii) self insurance, the level of which shall not exceed ten (10) percent of equity of the registrant as evidenced by submission of financial information as required by the Department; or~~

~~(iii) other evidence of financial responsibility approved by the Department; and~~

(~~g~~h) this statement signed by hand by the owner or his authorized agent: "I certify, under penalty of criminal and/or civil prosecution for making or ~~submission of~~ submitting false statements, representations, or omissions, that I have read, understand, and will comply with S.C. Regulation 61-105, ~~the South Carolina~~ Infectious Waste Management Regulation ~~R.61-105~~."

(i)the Employer Identification Number (EIN), if applicable;

(j)proof of financial responsibility as required by U.S. DOT. At a minimum, transporters are responsible for bodily injury, property damage, and environmental restoration due to sudden and accidental occurrences in the amount of at least one million dollars ($1,000,000) per occurrence exclusive of legal defense costs. This financial responsibility may be established by any one or a combination of the following:

(i) evidence of liability insurance. This insurance may be on a claim made or a per occurrence basis, with or without a deductible. The deductible, if any, shall be on a per occurrence or per accident basis and shall not exceed ten (10) percent of the equity of the registrant. The Department shall be notified prior to the policy being changed or cancelled;

(ii) self insurance, the level of which shall not exceed ten (10) percent of equity of the registrant as evidenced by submission of financial information as required by the Department; or

(iii) other evidence of financial responsibility approved by the Department; and

(k) an email address of the transporter (if available).

(2) ~~No person shall~~ A transporter shall not engage or continue to engage in transportation of infectious waste (except as outlined in Section N(2) above) in ~~South Carolina~~the State unless ~~they~~the transporter registers annually with the Department as an infectious waste transporter, and pays applicable fees as outlined in Section DD of this Regulation.

(a) Transporters ~~must~~shall notify the Department, in writing within thirty (30) days, if any changes occur in the information required for registration as outlined in Section O(1) above or if ~~they terminate their~~ the business is closed by the transporter; and

(b) Transporters who fail to re-register by the expiration date of their registration ~~must~~shall cease all infectious waste transport activities on the expiration date.

(c) A transporter's registration may be terminated or a new or renewal application may be denied by the Department for that transporter's noncompliance ~~by the transporter~~ with any conditions of the registration, or requirements of this ~~regulation~~Regulation~~,~~ or the Act.

(3) The financial responsibility required in Section (O)~~.~~(1)~~.~~(~~c~~j), including (i) through (iii), above ~~must~~shall be maintained. If any change occurs in a registered transporter's financial responsibility, he ~~must~~shall cease to transport infectious waste and immediately notify the Department ~~immediately~~ to determine when and how transportation may be resumed.

(4) Transporters will receive an Infectious Waste Transporter Number upon completion of the registration process. Use of a false, expired, or invalid registration number is prohibited.

(5) Transporter registration and Infectious Waste Transporter Numbers are not transferable.

(6) Transporters ~~which~~ who~~neither~~ transport infectious waste in the State but do not pick up ~~infectious waste nor~~ or deliver infectious waste within ~~this state~~ the State are exempt from registration. Transporters who only transport ~~into or within this state~~ regulated infectious waste packaged in accordance with applicable ~~United States Postal Service~~USPS ~~Domestic Mail Manual~~ laws, regulations, and standards for infectious ~~waste~~substance packaging ~~requirements~~ (e.g., parcel carriers) are also exempt from registration.

P. Transporter Acceptance of Infectious Waste.

Transporter acceptance of infectious waste occurs when the transporter takes the waste offsite or when the waste is loaded onto the transport vehicle.

(1) Transporters shall accept for transport only infectious waste ~~which~~ that is:

(a) packaged as required in Section I above (unless accepted in a loaded and sealed trailer from a broker or generator);

(b) labeled as required in Section J above (unless accepted in a loaded and sealed trailer from a broker or generator); and

(c) accompanied by a properly completed manifest, as required in Section R of this Regulation.

(2) Transporters ~~must attach a waterproof identification label~~ shall ensure that labeling, printing, or imprinting on~~to~~ the outside of each container of infectious waste ~~they~~ accepted for transport~~. The label must~~:

(a) ~~be affixed~~is applied in a manner ~~which~~ that does not cover any other required labels or markings~~. This identification label must include but is not limited to: (a)~~;

(b) is readily visible, indelible, and water-resistant; and

(c) includes the transporter's Department issued identification number~~,~~ or the transporter's name, address, and phone number~~; and~~.~~ (b) Reserved.~~

~~(3) If the transporter accepts loaded and sealed trailers from a broker or generator, that transporter does not have to assure proper packaging as required in Section I or proper labeling as required in Section J. However, the transporter must: (a) assure that the load is accompanied by a properly completed manifest; and (b) prevent discharges of infectious waste, especially fluids, from the cargo carrying body.~~

Q. Transport Vehicle Requirements.

(1) Each vehicle used to transport infectious waste ~~must~~ shall have a cargo-carrying body that meets at a minimum these requirements:

(a) ~~the vehicle shall have a fully enclosed, leak resistant cargo carrying body which protects the waste from animals, vectors, weather conditions, and minimizes exposure to the public;~~fully enclosed and leak resistant and protect the waste from animals, vectors, weather conditions, and minimize exposure to the public;

(b) ~~the containers of waste shall be loaded and unloaded so that no compaction or mechanical stress of the waste occurs during handling or during transit; (c) the cargo-carrying body shall be maintained in a sanitary condition and disinfected immediately after each unloading and as spills are detected;~~ maintained in a sanitary condition and disinfected at least once each day of use and as spills are detected;

(~~d~~c) ~~the cargo-carrying body shall be designed to prevent discharges of infectious waste, especially fluids, into the environment;~~ designed to prevent discharges of infectious waste, especially fluids;

(e~~d~~) ~~the cargo-carrying body shall be decontaminated of visible debris after each unloading;~~ decontaminated of visible debris after each unloading;

(~~f~~e) ~~the cargo-carrying body shall have doors which close tightly and can be sealed with a tamper resistant seal or otherwise secured if left unattended while carrying infectious waste;~~ have doors that close tightly and can be sealed with a tamper resistant seal or otherwise secured if left unattended;

(~~g~~f) identification ~~must~~shall be permanently affixed ~~to the cargo-carrying body~~on two sides and the back in letters a minimum of three (3) inches in height ~~which~~that states:

(i) the registered name of the transporter;

(ii) the transporter's Department issued registration number; and

(iii) the words 'INFECTIOUS WASTE', 'MEDICAL WASTE', or 'BIOHAZARDOUS WASTE' ~~.~~: and

(~~h~~g) the universal biohazard symbol sign permanently affixed to ~~the cargo-carrying body~~ it on two sides and the front and back ~~.~~;

(2) If a transporter transports or stores infectious waste and ~~other~~ solid waste in the same cargo-carrying body, each waste ~~must~~shall be managed as infectious waste unless the waste is subject to the requirements in Section (E)(2)(a) ~~-~~ through (c) of this Regulation.

(3) If a transport vehicle is used to store infectious waste, such storage ~~must~~shall, at a minimum:

(a) be ~~in a location which is~~ inside a building with limited access ~~and~~ that is locked when unattended; or

(b) be ~~in a location outside which is~~ secured by a barrier ~~which~~ that limits access and ~~must be~~ is locked when unattended; and

(c) ~~and~~ meet the requirements ~~of~~ in Section K of this Regulation.

(4) All drainage from the cargo-carrying body shall ~~discharge directly~~connect to or through a holding tank to a Department approved sanitary sewer system or approved container for appropriate treatment.

R. Manifest Requirements For Transporters.

(1) ~~No transporter shall~~ A transporter shall not accept a shipment of infectious waste ~~which~~ that is to be transported within ~~South Carolina~~ the State unless it is accompanied by an infectious waste manifest ~~which~~ that has been completed according to requirements in Section M, this Section, and elsewhere in this Regulation as applicable~~the instructions for the Department approved form~~ and signed by the generator.

(2) Before accepting for transport any infectious waste the transporter ~~must~~shall:

(a) visually inspect the containers to ~~assure~~ ensure proper packaging, if the waste is loaded by the transporter; and

(b) return ~~a~~ one (1) copy of the manifest form to the generator before leaving the site.

(3) The ~~transporter, transfer facility operator, and/or intermediate handling facility operator~~ person (e.g., transporter, transfer facility operator, intermediate handling facility operator) responsible for the

waste shall ensure that the manifest form accompanies the infectious waste at all times until ~~unloaded for treatment~~ the waste is transferred to the treatment facility.

(4) At the time of transfer, the transporter shall ensure that the manifest is updated with the date of transfer in accordance with the form's instructions.

(~~4~~5) The transporter who delivers infectious waste ~~within or into South Carolina~~to a location in the State ~~must~~shall ensure that the delivery is to a registered or properly permitted person (i.e., ~~infectious waste management~~ transporter, transfer facility, intermediate handling facility, generator facility, or treatment facility).

(~~5~~6) The transporter, upon delivery of infectious waste to a permitted treatment facility, transfer facility, generator facility, or intermediate handling facility, shall:

(a) retain ~~a~~ one (1) copy of the completed manifest ~~for his records~~; and

(b) ~~turn~~ submit the remaining copies of the manifest ~~over~~ to the ~~treatment facility~~person who will be responsible for the waste after its delivery.

(~~6~~7) The transporter shall deliver the entire quantity ~~represented on the~~ of ~~manifest~~accepted waste ~~that he accepted from the generator or another transporter~~ to another transporter, a generator facility, an intermediate handling facility, or a ~~destination~~ treatment facility.

(~~7~~8) ~~All transporters and/or management companies~~ Any person ~~which~~ that is listed ~~themselves~~ as the generator on ~~the manifest or~~ a ~~consolidated~~ manifest showing consolidated shipments ~~must~~shall assume full responsibility ~~of the generator(s)~~ as listed in Section M for that manifest and ~~must~~shall:

(a) attach a copy of the ~~completed new~~ manifest showing consolidated shipments ~~form~~ to the original manifest form and retain a copy of ~~the new and original~~ each manifest ~~form~~; and

(b) maintain a transporter consolidation log ~~indicating~~ listing all shipments that have been consolidated.

S. ~~Storage~~ Tank Storage Requirements.

(1) ~~Liquid~~ If stored, liquid treatment residue generated during the embalming process ~~may~~ shall be stored in an underground or aboveground storage tank located onsite at the generating facility. Tanks in operation ~~at the time this regulation takes effect~~ prior to June 25, 2010, ~~must~~shall meet the use, monitoring, ~~record keeping~~recordkeeping, disposal, and clean-up requirements of this Section. Tanks installed after ~~the date this regulation becomes effective~~ June 25, 2010, ~~must~~shall meet all requirements of ~~these regulations~~this Regulation.

(2) ~~Storage tanks~~ Tank storage ~~must~~shall meet the following conditions:

(a) ~~A~~a facility ~~must~~shall notify the Department in writing before installing a tank ~~to be used~~ for storage of treatment residue. -Notification should include facility name and address, number of tanks, and storage capacity;

(b) ~~Tank~~ materials ~~of construction~~used to construct the tank(s) ~~must~~shall be compatible with treatment residue to be stored;

(c) ~~T~~tank(s) ~~must~~shall be installed and maintained in accordance with manufacturer's instructions;

(d) ~~W~~when treatment residue is removed from the tank(s), it ~~must~~shall be ~~pumped~~ removed by a person licensed by the Department ~~for the~~ to clean~~ing of~~ disposal systems and the residue shall be sent directly to a regulated facility for further treatment or disposal;

(e) ~~T~~tank(s) ~~must~~shall be monitored following pump events and with a frequency that sufficient~~ly to~~ demonstrate~~s it~~ that the tank is not leaking. Monitoring may be performed utilizing a dipstick~~,~~; however monitoring ~~must~~shall be performed when tank contents are sufficiently settled;

(f) ~~The facility generating waste that is treated and stored in the tank must maintain create a~~ The generator is responsible for ensuring a record of tank monitoring and pump events shall be created. The generator shall maintain this record as required in Section AA of this Regulation;

(g) ~~T~~tank(s) ~~must~~shall be used exclusively for treatment residue storage; and

(h) ~~T~~tank(s) and records ~~must~~shall meet all applicable state and federal requirements~~, including Industrial Wastewater and Disposal System Clean-out requirements~~.

(3) The Department may require the generating facility to clean up any treatment residue discharge that occurs during storage or take such action as may be required by state, federal, or local officials ~~so~~ to ensure that the treatment residue discharge ~~no longer~~ does not present~~s~~ a potential hazard to human health or the environment.

T. Infectious Waste Treatment.

(1) Infectious waste ~~must~~shall be treated prior to disposal except as indicated in Section G. Treatment shall be in accordance with this Regulation and other applicable state and federal laws and regulations. After approved and adequate treatment, resulting treatment residue ~~must~~shall be disposed of in accordance with state and federal solid waste requirements. Any unused treatment media ~~must~~shall be characterized, handled, and disposed of in accordance with applicable regulations.

(2) ~~Treatment must be by one~~ One of the following treatment methods shall be utilized ~~in accordance with this regulation and other applicable state and federal laws and regulations~~:

(a) incineration;

(b) steam sterilization;

(c) chemical disinfection;

(d) embalming fluid containing at least two (2) percent formaldehyde; or

(e) any other Department approved treatment method.

(3) Approval for alternate treatment technologies ~~other forms of treatment must~~shall be obtained from the Department, in writing, based on an application on a Department approved form, prior to the use of the alternate technology, and meet current Department standards ~~set at that time by the Department~~. Approvals will be valid for the period stated on the approval. If an application for renewal is received, the existing approval will be in effect until the Department makes a decision on the renewal.

(4) The following infectious waste may be disposed of before treatment:

(a) a liquid or semi-liquid waste, other than microbiological cultures and stocks, that is directed to a Department-approved wastewater treatment system permitted under S. C. Regulation 61-9, Water Pollution Control Permits, when the liquid is approved by the treatment system owner or operator; and

(b) recognizable human anatomical remains that are disposed of by interment or donated for medical research.

(5) Storage of infectious waste prior to treatment ~~must~~shall be in accordance with Section K of this ~~regulation~~Regulation.

~~(a) an approved liquid or semi-liquid waste other than microbiological cultures and stocks may be discharged directly into a Department approved wastewater treatment disposal system; and~~
~~(b) recognizable human anatomical remains may be disposed of by interment or donated for medical research.~~
~~(6) It is unlawful for any person to discharge infectious waste or treatment residue into the environment of this State except as permitted by the Department. If a release of infectious waste or treatment residue to the environment is known or suspected, the facility must report to the Department within twenty-four (24) hours and immediately investigate and confirm all suspected releases. Action may then be required by local, state, or federal officials so that the infectious waste or treatment residue discharge no longer presents an actual or potential hazard to human health or the environment.~~

(~~7~~6) Facilities that are not required to be permitted as a treatment facility include:

(a) those that only treat liquid embalming waste with at least a two (2) percent formaldehyde solution and

(b) small quantity generators that treat, by an approved method onsite, infectious waste ~~which~~ that~~they~~ is generated onsite ~~are not required to be permitted as a treatment facility~~.

(~~8~~7) Treatment of infectious waste ~~must~~shall be monitored to ensure proper treatment using methods described in Section U of this Regulation ~~by use of biological indicators or laboratory culture of the treatment residue to ensure that pathogens have been adequately treated~~. Frequency of this ~~testing shall~~ monitoring shall be determined by the Department on a case-by-case basis or as outlined in this ~~regulation~~Regulation.

(~~9~~8) Products of conception ~~must~~shall be incinerated, cremated, interred, or donated for medical research.

U. ~~Infectious Waste~~ Treatment Facility and Generator Facility Standards.

(1) No person may operate an infectious waste treatment facility ~~or disposal facility~~ or generator facility without first obtaining a permit as required ~~by~~ in Section W of this ~~regulation~~Regulation except as exempted in Section T or as specified in Section X of this Regulation. ~~-~~A separate permit shall be required for each site or facility although the Department may include one or more different types of facilities in a single permit if the facilities are ~~co~~located on the same site.

(2) All treatment facilities ~~must~~shall treat the waste as ~~indicated~~ required in Section T above.

(3) ~~Infectious waste treatment residue must not be disposed of until or unless Department approved monitoring methods confirm effectiveness of the treatment process.~~

~~(~~4~~3) All treatment facilities ~~must~~shall develop and submit to the Department for approval a standard operating procedure manual ~~which will~~ to include, at a minimum, procedures for:

(a) unloading and handling ~~procedures~~;

(b) safety ~~procedures~~;

(c) emergency preparedness and response ~~plans~~;

(d) receiving, ~~record keeping~~recordkeeping, and reporting ~~procedures~~;

(e) ~~remedial action plans~~remediating spills or other contamination, including the requirements of U(8) below;

(f) quality assurance ~~plans for treatment methods~~and quality control;

(g) ~~radiological~~ radioactive and hazardous waste monitoring ~~procedures~~;

(h) ~~procedures for~~ identifying types and quantities of ~~infectious~~ waste received; and

(i) ~~contingency plans for use of alternate facilities; and~~

~~(j) procedures for~~ disposition of treatment residues.

(~~5~~4) Approval for acceptance of infectious waste at a treatment ~~or disposal~~ facility may be withdrawn by the Department for noncompliance with the facility's standard operating procedure manual.

(~~6~~5) When a facility ceases infectious waste management activities, it shall notify the Department in writing, immediately, and it shall thoroughly clean and disinfect the facility and all equipment used in the handling of infectious waste. Closure is not final until written approval is provided by the Department.

(6) Before closure, ~~All~~all untreated waste shall be ~~disposed of~~ transported or treated in accordance with the requirements of this ~~regulation~~Regulation.

(7) In the event of an accidental spill of infectious waste the designated personnel at the facility shall:

(a) contain the spill ~~to the area immediately affected~~;

(b) immediately disinfect the contaminated area ~~which is contaminated~~;

(c) pick up~~,~~ and repackage as required or ~~otherwise~~ immediately ~~remove~~treat the spilled material ~~into the treatment system~~; and

(d) create a record of the incident ~~in a bound log book~~, ~~including~~to include the quantity spilled, personnel involved, and the nature and consequences of the event and this record shall be maintained as required in Section AA of this Regulation~~; and~~.

—(e8) It is unlawful for any person to ~~discharge~~release infectious waste or treatment residue into the environment of this State except as permitted by the Department. If a release of infectious waste or treatment residue to the environment is known or suspected, the facility ~~must report to the Department within twenty-four (24) hours and immediately investigate and confirm all suspected releases~~shall immediately investigate and confirm all suspected releases and report the findings to the Department within twenty-four (24) hours. Additional action may ~~then~~ also be required by local, state, or federal officials ~~so~~ to ensure that the infectious waste or treatment residue discharge ~~no longer~~ does not present~~s~~ an actual or potential hazard to human health or the environment.

(~~8~~9) All ~~individuals~~persons involved with handling and management of waste shall receive thorough training in their responsibilities and duties. ~~A training protocol shall be submitted to the Department at the time of application for a permit. Training documentation for individuals shall be submitted to the Department within thirty (30) days of completion.~~A record of training shall be created. This record shall be maintained as required in Section AA below.

(~~9~~10) ~~Permittees shall notify the Department, in writing within thirty (30) days prior to any changes in ownership, operating control, name, or location.~~ The Department may ~~upon written request~~ transfer a permit to a new owner or operator ~~where no other change in the permit is necessary provided that~~ under the following conditions:

(a) a written agreement ~~containing a specific date~~is submitted that includes a specific date of transfer and details for transfer of ~~permit responsibility and~~ financial ~~assurance~~ and permit responsibilities between the current and new owner~~has been submitted to the Department~~;

(b) no change to the permit, other than the name of the owner and/or operator, is necessary; and

(c) a request for this transfer is received by the Department no later than thirty (30) days prior to any proposed changes.

(1~~0~~1) A facility receiving waste generated ~~in~~ by a hospital or by another generator ~~which~~ that uses radioactive material ~~must~~shall screen incoming waste for radioactivity as ~~they~~ it arrives at the treatment or generator facility. ~~Such~~ As part of this screening process, facilities ~~must~~shall:

(a) use instrumentation ~~which~~ that is approved by the Department for this ~~purpose~~process;

(b) ~~have~~ ensure the operator is properly trained on such equipment;

(c) ~~have such~~ ensure the equipment is calibrated at least once a year by an authorized calibrator;

(d) maintain a log of quality assurance testing and calibration of such instrumentation; and

(e) report to the Department any and all incidents when radioactive materials are detected ~~to the Department for~~in order to obtain guidance in dealing with the radioactive materials. The Department may allow a treatment facility to hold containers of waste containing radioactive material for radioactive decay ~~after the facility has submitted procedures for appropriately managing the containers and has received approval from the Department~~ in accordance with Department-approved procedures. However, under no circumstance may a treatment facility solicit the receipt of radioactive material.

(1~~1~~2) Facilities shall schedule shipments of waste to prevent a backlog of loaded transportation vehicles at the facility or offsite. The number of loaded and unloaded transport vehicles stored onsite will be controlled by permit conditions.

(12~~2~~3) A facility receiving waste generated offsite ~~must~~shall: ~~log in~~

(a) create a record of transport vehicles as they arrive at the facility ~~in a bound log book~~ and note, in this ~~book~~ record, if any of these shipments are rejected. This record shall be maintained as required in Section AA below;~~The treatment facility must:~~;

(~~a~~b) disinfect the cargo-carrying ~~compartment~~body(s) ~~immediately after unloading the waste~~at least once each day of use; and create a record of when the cargo-carrying body was disinfected. This record shall be maintained as required in Section AA below; and

(~~b~~c) clean out visible debris and immediately ~~put~~ place the debris into the treatment system.

(13~~4~~) ~~Incinerators must, in addition to items (1) through (12) above~~The operator of a treatment facility where incineration is used, in addition to meeting the requirements in Section U(1) through (13) above, shall:

(a) provide complete combustion of the waste and packaging to carbonized or mineralized ash;

(b) comply with all applicable regulations ~~issued~~ promulgated by the Department; and

(c) receive authorization from the Department for disposal of treatment residue ~~from the Department~~ prior to disposition into a State landfill ~~located in this state, and said authorization shall be based on relevant analyses and requirements deemed necessary by the Department~~. Such authorization may be incorporated into a landfill permit.

(14~~5~~) ~~All steam sterilizers must, in addition to items (1) through (12) above.~~The operator of any treatment facility using steam sterilization, in addition to meeting the requirements in Section U(1) through (13), shall:

(a) use Department approved indicator organisms in test runs to ~~assure~~ ensure proper treatment of the waste. ~~Indicator~~ In each treatment unit, indicator organisms ~~must~~shall be used daily at a commercial facility and monthly at a generator facility ~~in each steam sterilizer~~;

(b) ~~record the temperature and time during each complete cycle to ensure the attainment of a temperature of 121 degrees Centigrade (250 degrees Fahrenheit) for 45 minutes or longer at fifteen (15) pounds pressure, depending on quantity and density of the load, in order to achieve sterilization of the entire load; (Thermometers shall be checked for calibration at least annually.)~~
create record(s) of the temperature, pressure, and time during each complete cycle;

(c) ~~have a gauge which indicates the pressure of each cycle;~~calibrate pressure gauges and thermometers at least annually;

(d) operate in accordance with the manufacturer's specifications for waste regarding time, temperature, pressure, composition, and capacity, if these specifications provide effective treatment. If no manufacturer's specifications for waste exist, or if another combination of time, temperature, pressure, composition, and capacity is used, proposed specifications that provide effective and proven treatment shall be approved by the Department;

(~~d~~e) use heat sensitive tape or other device for each container that is treated, to indicate that the steam sterilization temperature has been reached. The waste will not be considered appropriately treated if the indicator fails;

(~~e~~f) ~~use~~place the biological indicator Geobacillus stearothermophillus~~, placed~~ at the center of a load ~~processed under~~ and treat using standard operating ~~conditions~~ specifications ~~to confirm the attainment of adequate sterilization conditions~~;

(~~f~~g) ~~maintain~~create records of the procedures specified in Section U(15)(b), U(15)(c), and U(15)(f) and ~~(e) above~~ maintain these records as required in ~~for period of not less than three (3) years~~Section AA below; and

(~~g~~h) ~~assure~~ ensure that treatment residues are disposed of in accordance with applicable ~~S~~state and ~~F~~federal ~~R~~requirements.

V. Intermediate Handling ~~Facilities~~ Facility Standards.

(1) No person may operate an infectious waste intermediate handling facility without first obtaining a permit as required ~~by~~ in Section W of this ~~regulation~~Regulation. ~~-~~A separate permit shall be required for each site or facility although the Department may include one or more different types of facilities in a single permit if the facilities are ~~co-~~located on the same site.

(2) All intermediate handling facilities ~~must~~shall develop, and submit to the Department for approval, a standard operating procedure manual ~~which will~~ to include, at a minimum, procedures for:

(a) unloading and handling ~~procedures~~;

(b) safety ~~procedures~~;

(c) emergency preparedness and response ~~plans~~;

(d) receiving, ~~record keeping~~recordkeeping, and reporting ~~procedures~~;

(e) ~~remedial action plans~~remediating spills or other contamination, including the requirements of V(6) below;

~~(f) procedure for treatment of spills;~~

(~~g~~f) ~~radiological~~ radioactive and hazardous waste monitoring ~~procedures~~; and

(~~h~~g) ~~procedures for~~ identifying types and quantities of ~~infectious~~ waste received~~;~~.

~~(i)contingency plans for use of alternate facilities; and~~

~~(j) procedures for disposition of treatment residues.~~

(3) Approval for acceptance of infectious waste at an intermediate handling facility may be withdrawn by the Department for noncompliance with the facility's standard operating procedure manual.

(4) When a facility ceases infectious waste management activities, it shall notify the Department in writing, immediately, and it shall thoroughly clean and disinfect the facility and all equipment used in the handling of infectious waste. Closure is not final until written approval is provided by the Department.

(5) All untreated waste shall be ~~disposed of~~ transported or treated in accordance with the requirements of this ~~regulation~~Regulation.

(~~5~~6) In the event of an accidental spill of infectious waste, the designated personnel at the facility shall:

(a) contain the spill ~~to the area immediately affected~~;

(b) immediately disinfect the contaminated area ~~which is contaminated~~;

(c) ~~immediately~~ pick up and repackage as required ~~or treat the spilled material~~; and

(d) create a record of the incident ~~in a bound log book~~, including the quantity spilled, personnel involved, and the nature and consequences of the event and maintain this record as required in Section AA of this Regulation~~; and~~.

~~—~~(e7) It is unlawful for any person to ~~discharge~~release infectious waste or treatment residue into the environment of this State except as permitted by the Department. If a release of infectious waste or treatment residue to the environment is known or suspected, the facility ~~must report to the Department within twenty-four (24) hours and immediately investigate and confirm all suspected releases~~shall immediately investigate and confirm all suspected releases and report the findings to the Department within twenty-four (24) hours. Additional action may ~~then~~also be required by local, state, or federal officials ~~so~~ to ensure that the infectious waste or treatment residue discharge ~~no longer~~ does not present~~s~~ an actual or potential hazard to human health or the environment.

(~~6~~8) All ~~individuals~~ persons involved with handling and management of waste shall receive thorough training in their responsibilities and duties. ~~A training protocol shall be submitted to the Department at the time of application for a permit. Training documentation for employees shall be submitted to the Department within thirty (30) days of completion.~~ A record of this training shall be created. This record shall be maintained as required in Section AA below.

(~~7~~9) ~~Permittee shall notify the Department in writing within thirty (30) days prior to any changes in ownership, operating control, name, or location. The Department may upon written request transfer a permit to a new owner or operator where no other change in the permit is necessary provided that a written agreement containing a specific date for transfer of permit responsibility and financial assurance between the current and new owner has been submitted to the Department.~~The Department may transfer a permit to a new owner or operator under the following conditions:

(a) a written agreement is submitted that includes a specific date of transfer of financial and permit responsibilities between the current and new owner;

(b) no change to the permit, other than the name of the owner and/or operator, is necessary: and

(c) a request for this transfer is received by the Department no later than thirty (30) days prior to any proposed changes.

(~~8~~10) Facilities shall schedule shipments of waste to prevent a backlog of loaded transportation vehicles at the facility or offsite. The number of loaded and unloaded transport vehicles stored onsite will be controlled by permit conditions.

(~~9~~11) A facility receiving waste generated offsite ~~must~~shall:

(a) ~~log in~~ create a record of transport vehicles as they arrive at the facility ~~in a bound log book~~ and note, in this ~~book~~ record, if any of these shipments are rejected. ~~The intermediate handling facility must:~~This record shall be maintained as required in Section AA below;

(~~a~~b) disinfect the cargo-carrying ~~compartment~~body(s) ~~immediately after unloading the waste~~at least once each day of use; and create a record of this disinfection. This record shall be maintained as required in Section AA below; and

(~~b~~c) clean out visible debris and immediately ~~put~~ place the debris into the treatment system.

W. Permit Applications and Issuance.

(1) No person may ~~expand or~~ construct a new treatment facility or intermediate handling facility without obtaining an Infectious Waste Management permit issued by the Department. To obtain a permit, the applicant shall demonstrate the need for such a facility or expansion. To determine if there is a need, infectious waste generated outside of the State may not be considered without Department approval.

(a) Commercial treatment facilities shall have a seventy-five (75) mile planning radius.

(b) Each commercial treatment facility permitted after the effective date of this Regulation shall initially be allowed up to a maximum yearly treatment capacity equal to the total amount of regulated infectious waste generated in the planning area as follows:

(i) one hundred (100) percent of the host county; and

(ii) fifty (50) percent of each county, other than the host county, that falls wholly or partially within the seventy-five (75) mile planning radius that does not have a commercial treatment facility that accepts regulated infectious waste within that county.

(c) A commercial treatment facility operating within twenty (20) percent of the permitted yearly treatment capacity stated in their current permit may submit a request for an increase in their permitted yearly treatment capacity. This increase may be granted only if there has been an increase in the amount of regulated infectious waste generated in their planning area as stated in Section W(1)(b), including (i) and (ii), above.

(d) A variance to the permitted yearly treatment capacity may be granted for a specific term, corresponding to the need, in the event of an emergency or documented large project with a specified term, as determined solely by the Department. This temporary increase in yearly treatment capacity, if granted, is not considered by the Department when determining if a facility is within twenty (20) percent of its permitted yearly treatment capacity.

(2) The Department will determine and publish annually an estimate of the amount of infectious waste to be generated in ~~South Carolina~~the State during the ensuing twelve (12) months.

(3) The requirement to ~~demonstration of~~ demonstrate need does not apply to:

(a) facilities owned by counties, municipalities, or public service districts ~~which~~ that accept only infectious waste generated in this state;

(b) facilities that are owned or operated by the generator of the waste ~~and this~~, for waste ~~is~~ generated in this state;

(c) generator facilities; ~~or~~

(d) facilities currently operated under permits issued by the Department, or ~~to~~ the renewal of existing permits issued by the Department if there is no expansion of the capacity as prescribed in the conditions of the permit~~.~~; or

~~(4) No person may expand or construct a new intermediate handling facility without an Infectious Waste Management permit issued by the Department. I~~

(e) intermediate handling ~~facility permit applicants do not have to demonstrate a need~~facilities.

(~~5~~4) To obtain an Infectious Waste Management Permit, the person ~~must~~shall complete a permit application ~~as designed by the~~ on a Department approved form. ~~-~~Permit applications will not be processed until they are deemed administratively complete by the Department.

(~~6~~5) ~~A draft of the~~ The manual required in Section U-(4) above or Section V(2) above, as appropriate, ~~must accompany~~ shall be submitted for review with the permit application. ~~The manual must meet the approval of the Department or be modified so that it will meet approval.~~ After approval by the Department, the standard operating procedure manual ~~shall~~ becomes part of the permit and ~~must~~shall be adhered to by the permittee. Changes in this manual ~~must~~shall be made by submittal of a written request to the Department which may approve or deny such request.

(~~7~~6) In addition to other requirements, a permit application for a treatment facility or intermediate handling facility ~~must~~shall include, at a minimum:

(a) an engineering report ~~which~~that, at a minimum, contains a description of the facility, the process and equipment to be used, the proposed service area, and storage of the waste;

(b) engineering plans and specifications ~~which must~~that, at a minimum, describe the architectural, mechanical, electrical, plumbing, heating, ventilating, process equipment, instrumentation and control diagrams, and performance specifications for all major equipment and control centers;

(c) the latitude and longitude of the facility;

(d) a topographic map (or similar map) extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its infectious waste management, treatment, or storage~~, or disposal~~ facilities; those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within ~~the~~ a quarter-mile of the facility property boundary; and the hundred (100)-year flood plain;

(e) a written acknowledgment from the governing body of the city, ~~or~~ town, ~~and/~~or county (whichever has the most stringent applicable requirements) in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances;

(f) a description of the process to be used for treating, storing, handling, and transporting ~~and disposing of~~ infectious waste, and the design capacity of these items;

(g) a description of the type of the infectious waste to be treated, stored, or transported ~~or disposed~~ at the facility, an estimate of the quantity of such wastes to be treated, stored, and transported~~, and disposed~~ annually;

(h) ~~a quality assurance and quality control report~~a training program that includes a description of topics covered and training frequency;

(i) a contingency plan as defined in this Regulation~~describing a technically and financially feasible course of action to be taken in response to~~ for contingencies which may occur during construction ~~and~~ or operation of the facility ~~to include a description of how the waste will be managed to protect the waste from flood waters.~~;

(j) an identification of possible air releases and groundwater or surface water discharges;

(k) a waste control plan describing the manner in which waste will be received, stored, and otherwise managed;

(l) a plan outlining the flow of traffic associated with the facility;

(m) a closure plan that includes; ~~a closure plan which includes the estimated cost of closure;~~

(i) ~~a closure cost estimate which must be based on the cost of hiring a third party to close the facility; and~~procedures outlining actions required to properly close the facility; and

(ii) ~~a cost estimate which may not include any salvage value from the sale of any structures, equipment, and other assets.~~a closure cost estimate based on permitted storage amounts and current industry prices for treatment, transport, and disposal of all stored waste as well as cleaning and disinfecting the facility. The cost estimate may not include any salvage value from the sale of any structures, equipment, or other assets;

(n) the Employer Identification Number (EIN), if applicable;

(o) an email address of the treatment facility (if available); and

(~~n~~p) other information ~~as may be~~ requested or required by the Department.

(~~8~~7) The Permittee shall notify the Department in writing within thirty (30) days of any changes of the information required in Section W(~~7~~6) ~~above~~ or changes ~~which~~ that would require modifications of the permit as issued, including expanding the facility.

(~~9~~8) A permit may be terminated or a new or renewal application may be denied by the Department for noncompliance by the permittee with any conditions of the permit, requirements of this ~~regulation~~Regulation, or the Act.

(~~10~~9) ~~In addition to conditions required in all permits, the~~The Department shall establish conditions for all permits, on a case by case basis, ~~conditions as required on a case-by-case basis,~~ for the duration of the permits, schedules of compliance, monitoring, and to provide for and ~~assure~~ ensure compliance with all applicable requirements of this ~~regulation~~Regulation.

(~~11~~10) Permits will be valid for the period stated on the permit. ~~If the application for renewal is received as above, the permit will continue in force until the Department makes a permit decision.~~ If an application for renewal is received as required in the facility's permit, the existing permit will be in effect until the Department issues a final decision on the renewal.

(~~12~~11) ~~As a condition of approval for an Infectious Waste Management Permit, any person who owns or operates a facility or group of facilities for the treatment, storage, or disposal of infectious waste must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from the operation of the facility or group of facilities and assure the satisfactory maintenance, closure, and postclosure care of any facility or group of facilities, and to carry out any corrective action which may be required by the Department. Such form and amount of financial responsibility shall be a permit condition specified by the Department. At any time, should the Department determine that the levels of financial responsibility required are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.~~Any person who owns or operates a facility or group of facilities for the treatment or storage of infectious waste shall demonstrate financial responsibility coverage for the satisfactory closure of any facility or group of facilities.

(12) Any person who owns or operates a facility or group of facilities for the treatment or storage infectious waste shall demonstrate financial responsibility coverage for bodily injury and property damage to third parties caused by sudden and accidental occurrences arising from the operation of the facility or group of facilities.

(13) Before a final permit will be issued, the applicant shall ensure that the funds needed for financial responsibility coverages are available by establishing assurance through one (1) or more of the following mechanisms: certificate(s) of deposit, irrevocable letter(s) of credit, or other sureties deemed satisfactory to the Department and a trust agreement approved by the Department. If the owner or operator is in violation of permit requirements, the Department will have the right to use part or all of the fund to protect the health and safety of the public or the environment.

(14) Should the Department determine, at any time, that the levels of financial responsibility required are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility coverage required as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.

(~~13~~15) ~~The permittee must immediately notify the Department upon loss of the financial responsibility coverage. A permittee shall cease to treat or store infectious waste upon loss of financial responsibility coverage.~~The permittee shall immediately notify the Department upon loss of financial responsibility coverage. A permittee shall not treat or store infectious waste without financial responsibility coverage.

(~~14~~16) A facility may receive only those waste streams for which it is permitted; however, a facility may, in writing, request ~~in writing~~ to receive new waste streams ~~which are subject to Department approval or denial~~. Approval to grant or deny these requests is solely within the Department's authority.

X. Permit By Rule.

(1) ~~All infectious waste generators which comply with the conditions of (2) below shall be deemed to have a permit by rule.~~ All infectious waste generators that comply with the conditions of Section X(2) below shall be deemed to have a permit by rule. If an infectious waste generator treats the infectious waste and it is then transported for treatment at a permitted treatment facility such that the generator receives a complete record of treatment in accordance with Section AA, the generator will not be required to obtain permit by rule status.

(2) To qualify for permit by rule the owner and~~/or~~ operator, if different, of the ~~facility shall~~generator shall:

(a) comply with all ~~parts~~ provisions of the Act and this ~~regulation~~Regulation except permitting ~~procedures of~~ requirements of Section W above~~.~~;

(b) demonstrate that more than seventy-five (75) percent (by weight, in a calendar year) of all infectious waste that is ~~stored,~~ treated ~~or disposed of~~ by the ~~facility~~generator is generated onsite~~.~~;

(c) ~~assure~~ ensure that no activities ~~at~~of the ~~facility~~generator involve the placing of infectious waste directly into the environment~~.~~;

(d) notify the Department in writing that the ~~facility~~generator is operating under a permit by rule and ~~supply~~ provide the following information:

(i) the name, mailing address, ~~location~~site address, and phone number of the ~~facility~~generator;

(ii) type(s) of businesses served;

(iii) the type of ~~facility~~generator; ~~and~~

(iv) the ~~principal officer~~name of the treatment coordinator; and

(v) the method of treatment; and

(e) notify the Department in writing before onsite treatment activities begin.

(3) All infectious waste generators who treat infectious waste, ~~and~~ are not exempted in Section T, and do not meet~~ing~~ the requirements ~~of~~ in Section X(2) above, shall apply for an infectious waste treatment permit as outlined in Section W of this Regulation.

(4) Any ~~facility deemed to have~~generator operating under a permit by rule ~~which~~ who fails to satisfy any one of the conditions set forth in Section X(2) above or this ~~regulation~~Regulation may have its permit by rule revoked and ~~must~~shall obtain a permit as outlined in Section W above to continue to store~~,~~ or treat~~, or dispose of~~ infectious waste.

Y. Manifest Form Requirements For Permitted Treatment Facilities.

(1) Treatment facilities ~~must~~shall not accept infectious waste to be treated, stored, or otherwise managed unless accompanied by a Department approved manifest form if the waste is generated offsite.

(2) ~~The~~ When accepting a manifested shipment, the facility owner or operator ~~or his authorized agent of a treatment facility when accepting a manifested shipment~~ shall ensure:

(a) ~~write on the manifest~~ the number of containers accepted and the total weight are listed on the manifest;

(b) ~~note~~ any discrepancies greater than ten (10) percent of the container count are noted on the manifest; and

(c) ~~retain~~ a copy of the completed manifest form ~~for two (2) years~~is maintained as required in Section AA below.

(3) When there is any variation in piece count greater than one (1) percent or in weight greater than ten (10) percent ~~is discovered~~, the owner or operator shall attempt to resolve the discrepancy with the waste generator or the transporter. If the discrepancy is not resolved, the owner or operator shall submit a letter to the Department, within five (5) days~~,~~ of receipt of the waste, describing the nature of the discrepancy and the attempts the owner or operator ~~has undertaken~~ took to reconcile it. The owner or operator shall include with this letter a legible copy of the manifest in question.

(4) If a facility receives any infectious waste from offsite ~~which~~ that is not accompanied by a manifest, or ~~which~~ that is accompanied by a manifest ~~which~~ that is incorrect, incomplete, or not signed, the owner~~/~~ or operator ~~must~~shall prepare and submit to the Department a written ~~copy of a~~ report within fifteen (15) days ~~after~~ of receiving the waste. ~~The "Unmanifested Waste Report" must~~ This report shall include the following information:

(a) the name and address of the facility;

(b) the date the facility received the waste;

(c) the identification number or name and address of the generator and the transporter if available;

(d) a description and the quantity of the waste;

(e) the method of treatment, storage, or disposal of the waste;

(f) a certification ~~signed~~ of the accuracy of the information provided in response to Y(4)(a) through (e) above by the owner or operator of the facility or his authorized representative; and

(g) a brief explanation of why the waste was unmanifested or why the manifest was incorrect, if ~~possible~~ known.

Z. Reporting For Permitted Treatment Facilities.

(1) All commercial treatment facilities are required to submit the monthly fees and reports as required by the Act in Section 44-93-160.

(2) All treatment facilities are required to submit an annual report to the Department, covering the period from January 1st through December 31st of each calendar year ~~which~~ that shall be submitted to the Department by February 15th of the subsequent year. The report shall include, but is not limited to:

(a) ~~a description of the sources by state, and amounts of infectious waste treated;~~ a description of the amounts of infectious waste treated by state of origin;

(b) the method used to treat the waste; and

(c) the amount and disposition of the residue.

AA. Inspections and Record Keeping.

(1) Department representatives are authorized to enter and inspect any property or premises for the purpose of ascertaining compliance or noncompliance with this ~~regulation~~Regulation.

(2) All generators, transporters, transfer facilities, intermediate handling facilities and treatment facilities handling infectious waste generated, treated, transported, or otherwise managed in the State shall maintain all records and manifest copies required ~~by~~ in this ~~regulation~~Regulation for a minimum of two (2) years in a location within ~~South Carolina~~the State easily accessible to the Department during regular business hours and shall provide these records to the Department immediately upon request or, with Department approval, within five (5) business days. Records may be maintained in paper form or electronically.

(3) If the waste is no longer infectious because of treatment, the generator, or permitted facility if waste was generated out of state, shall maintain a record of the treatment ~~for two (2) years afterward~~ to include the date and type of treatment, amount of waste treated, and the individual operating the treatment unit. ~~Records for onsite treatment shall be maintained by the generator for a minimum of two (2) years in a location easily accessible to the Department and shall be provided to the Department upon request. Records may be maintained in paper form or electronically.~~

(4) If the waste is no longer infectious because of treatment, and the treatment residue is stored onsite in a tank, the generator shall maintain a record of monitoring and pump events ~~for two (2) years afterward~~ to include the date and type of monitoring, the name of the person who conducted the monitoring, date and amount of waste pumped, and the name of the business or person that provided the pumping service. Pump event data may be in the form of a manifest or log. ~~Records shall be maintained by the generator for a minimum of two (2) years in a location within South Carolina easily accessible to the Department and shall be provided to the Department upon request. Records may be maintained in paper form or electronically.~~

BB. Enforcement.

(1) Any person who violates any of the provisions of this ~~regulation~~Regulation or any permit issued pursuant hereto, or any order issued by the Department or Board shall be subject to applicable civil, administrative, and criminal penalties as provided for in the ~~Infectious Waste Management~~ Act.

(2) Any registered generator or transporter~~,~~ or any permitted ~~intermediate handling facility or treatment~~ facility is subject to having its registration or permit suspended or revoked upon finding by the Department that:

(a) false or inaccurate information has been submitted in the application process;

(b) laws, Department orders, regulations, or registration or permit conditions have been violated;

(c) reports or other information required by the Department have not been submitted or have been inaccurately submitted; and/or

(d) lawful inspection has been refused.

CC. Variances.

(1) The Department may, upon written petition from any person who is subject to this ~~regulation~~Regulation, grant a variance from one or more specific provisions of this ~~regulation~~Regulation under the following conditions. The written petition~~er shall~~at a minimum, shall include:

(a) ~~identify~~ the specific provision(s) of this ~~regulation~~Regulation from which variance is sought;

(b) ~~demonstrate~~ a demonstration that compliance with the identified provision would, on the basis of conditions unique and peculiar to the applicant's particular situation, tend to impose a substantial financial, technological, or safety burden on the petitioner or the public; and

(c) ~~demonstrate~~ a demonstration that the proposed activity will have no significant adverse impact on the public health, safety, or welfare, the environment or natural resources and will be consistent with the provisions of the S.C. Infectious Waste Management Act.

(2) In granting any variance~~, hereunder~~ the Department may impose specific conditions reasonably necessary to ensure that the subject activity will have no adverse impact on~~ the~~ public health, safety, or welfare, the environment or natural resources. Variances will be valid for the period stated on the variance approval. If an application for renewal is received while the variance is valid, the existing variance will be in effect until the Department makes a decision on the renewal.

(3) Any variance granted by the Department may be immediately withdrawn when the Department finds on the basis of complaints, noncompliance with conditions of the variance or other information that the variance is not in the public interest or protective of human health and/or the environment, or that the petitioner has provided false or inaccurate information on which the variance was granted.

(4) Nothing herein shall be construed as a waiver of the Department's right to deny any petition for a variance.

DD. Fees ~~Section~~.

Fees are outlined in~~ the~~ S.C. Regulation 61-30, Environmental Protection Fees~~, Regulation 61-30~~.

~~EE. Appeals.~~

~~(1) A Department decision involving the issuance, denial, renewal, suspension, or revocation of a permit, license, certificate, or certification may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.~~

~~(2) Any person to whom an order is issued may appeal pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.~~

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
SUMMARY SHEET

September 8, 2016

(X) ACTION
( ) INFORMATION

I. TITLE: Proposed Amendments of Regulation 61-12, *Standards for Licensing Abortion Clinics*

Legislative review is required.

II. SUBJECT: Request Initial Approval to Publish Notice of Proposed Regulations in the *State Register* to Provide Opportunity for Public Comment

III. FACTS:

1. The South Carolina Department of Health and Environmental Control (Department) proposes amending Regulation 61-12, *Standards for Licensing Abortion Clinics*. R.61-12 has not been substantively amended since 1996. The amendments to the regulation are necessary to update definitions, nomenclature, codification, and overall improvement and updates to the text of the regulation.

2. The Department proposes amending R.61-12 pursuant to the S.C. Code Section 1-23-120(J) requirement that the Department perform a review of its regulations every five (5) years and update them if necessary. These amendments are necessary to revise requirements for obtaining licensure, compliance for licensure, accident and incident reporting requirements, abortion reporting, inspections and violations, complaint reporting, patient rights, infection control, inservice training, record maintenance and retention, personnel requirements, fire and life safety requirements, and construction design requirements. Department staff has added language incorporating current provider-wide exceptions and memoranda applicable to abortion clinics. In addition, corrections have been made for clarity, readability, grammar, references, codification, and overall improvement to the text of the regulation.

3. Pursuant to S.C. Code Section 1-23-120(A), the proposed amendments of Regulation 61-12 require legislative review.

4. The Department initiated the statutory process to amend R.61-12 by publication of a Notice of Drafting in the *State Register* on April 22, 2016. The Notice of Drafting was also published on the Department's Regulation Development Update website. A copy of the Notice of Drafting is submitted as Attachment F.

5. Following publication of the Notice of Drafting in the *State Register*, the Department received a total of eight (8) comments from Charleston Women's Medical Center during the drafting comment period. The comments received during the drafting comment period are included in the Summary of Drafting Comments and Department Responses, submitted as Attachment D. Additionally, the Department held a regulation development meeting on June 21, 2016, for abortion clinic licensees and other interested parties to discuss regulatory revisions with Department representatives. Notice of the meeting was provided to all abortion clinic licensees and stakeholders as well as posted on the Department's website. The meeting was attended by ten (10) individuals and gave Department staff an opportunity to discuss the regulation with stakeholders and licensees and receive guidance and clarification on certain items within the regulation. Department staff considered comments received during the drafting comment period as well as guidance provided at the regulation development meeting in finalizing the regulatory text for the Notice of Proposed Regulation.

5. A Summary of Proposed Revisions and Text of the Proposed Amendments of R.61-12 are submitted as Attachments B and C.

6. Pursuant to agency internal review policy, all appropriate Department personnel have reviewed the proposed amendments.

7. The Department requests initial Board approval to publicly notice the proposed amendments to provide opportunity for public comment. If approved, a Notice of Proposed Regulation will be published in the *State Register* on September 23, 2016, and a public hearing before the Board will be scheduled for December 8, 2016. A copy of the draft Notice of Proposed Regulation is submitted as Attachment E.

IV. ANALYSIS:

1. Existing R.61-12 outlines requirements for the licensure and operation of abortion clinics in South Carolina. The regulation is intended to protect the health, safety, and care of patients receiving services in these facilities.

2. The proposed amendments to R.61-12 will support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments will clarify regulation requirements pertaining to abortion clinics. In particular, the amendments will update provisions for obtaining and maintaining licensure, accident and/or incident reporting requirements, record maintenance and retention, infection control and sanitation, patients' rights, emergency procedures and disaster preparedness, design and construction, and fire and life safety. Corrections have been made for clarity, readability, grammar, references, codification, and overall improvement to the text of the regulation. The Statement of Need and Reasonableness and Rationale is submitted as Attachment A.

V. RECOMMENDATION:

The Department recommends the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register*, provide opportunity for public comment, receive and consider comments, and allow the Department to proceed with a public hearing before the Board.

Gwen C. Thompson
Chief
Bureau of Health Facilities Licensing

Shelly Bezanson Kelly, J.D.
Director
Health Regulation

Attachments

A. Statement of Need and Reasonableness and Rationale
B. Summary of Proposed Revisions
C. Text of Proposed Amendments
D. Summary of Drafting Comments and Department Responses
E. Draft of *State Register* Notice of Proposed Regulation
F. *State Register* Notice of Drafting

ATTACHMENT A
STATEMENT OF NEED AND REASONABLENESS AND RATIONALE
REGULATION 61-12, STANDARDS FOR LICENSING ABORTION CLINICS

September 8, 2016

This Statement of Need and Reasonableness is based on an analysis of the factors listed in S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: R.61-12, *Standards for Licensing Abortion Clinics*.

Purpose: The purpose of these amendments to R.61-12 is to revise and clarify standards pertaining to abortion clinics. These proposed amendments provide updates to the definitions, requirements for obtaining and maintaining licensure, accident and/or incident reporting requirements, record maintenance and retention, patients' rights, emergency procedures and disaster preparedness, infection control and sanitation, personnel requirements, design and construction, and fire and life safety. In addition, provisions have been amended for general clarity, readability, grammar, references, codification, and overall improvement to the text of the regulation.

Legal Authority: 1976 Code Sections 44-41-10, et seq, and 44-7-110, et seq.

Plan for Implementation: Upon approval by the General Assembly and publication in the *State Register* as a final regulation, a copy of R.61-12, which includes these latest amendments, will be available electronically on the Department's Laws and Regulations website under the Health Regulations category at: http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/. Subsequently, this regulation will be published in the South Carolina Code of Regulations. Printed copies will be available for a fee from the Department's Freedom of Information Office. The Department will also send an email to stakeholders, affected services and facilities, and other interested parties.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Regulation 61-12 has not been substantively updated since 1996. Therefore, many of the procedures, practices, and terms are outdated and/or no longer applicable. The amendments further clarify and improve reporting requirements, patients' rights, personnel requirements, record maintenance and retention, infection control and sanitation, inservice training, and emergency procedures and disaster preparedness. Additionally, amendments to design and construction, and fire and life safety are needed to comply with current codes and procedures.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of these amendments will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of these amendments. There are no anticipated additional costs to the regulated community. Amendments to R.61-12 improve patient rights and assurances, personnel requirements, inservice training, accident and/or incident reporting requirements, update emergency procedures and disaster preparedness planning, and update design, construction, and fire and life safety measures to comply with current procedures and codes.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The amendments to R.61-12 seek to support the Department's goals relating to the protection of public health through the anticipated benefits highlighted above. There is no anticipated effect on the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment. If the revision is not implemented, the regulation will be maintained in its current form without realizing the benefits of the amendments herein.

STATEMENT OF RATIONALE:

The Department proposes amending R.61-12, *Standards for Licensing Abortion Clinics*. The amendments update R.61-12 to incorporate best practices while ensuring protection of public health. The amendments address issues regarding licensure requirements, personnel requirements, inservice training, emergency procedures and disaster preparedness planning, accident and/or incident reporting ambiguities, lessen the burden regarding design and construction requirements, and update the design, construction, and fire and life safety to current codes and standards.

ATTACHMENT B
SUMMARY OF PROPOSED REVISIONS
REGULATION 61-12, STANDARDS FOR LICENSING ABORTION CLINICS

September 8, 2016

Section-by-Section Discussion of Proposed Amendments

The title was amended for regulatory consistency and clarity.

Statutory authority for this regulation was added under the title of the regulation and before the table of contents.

TABLE OF CONTENTS

The table of contents was updated to reflect amended sections.

61-12.100. DEFINITIONS AND LICENSE REQUIREMENTS (formerly 61-12.PART I)
Section title was amended for clarity.

61-12.101. Definitions
The definitions of 101.C Administrator, 101.D Administering Medication, 101.H Controlled Substance, 101.I Consultation, 101.M Health Assessment, 101.O Inspection, 101.P Investigation, 101.Q Legally Authorized Healthcare Provider, 101.R License, 101.T Licensed Nurse, 101.W Nonlegend Medication, 101.X Physical Examination, 101.BB Procedure Room, 101.DD Quality Improvement Program, 101.EE Recovery Area, 101.FF Repeat Violation, 101.GG Responsible Party, 101.HH Revocation of License, 101.II Staff Member, and 101.JJ Suspension of License were added. The definitions of 101.B Abortion Clinic, 101.E (formerly 101.C) Allied Health Professional, 101.N (formerly 101.K) In Loco Parentis, 101.S (formerly 101.L) Licensee, 101.V (formerly 101.N) Minor, 101.Y (formerly 101.O) Physician, 101.Z (formerly 101.P) Pregnancy, 101.AA (formerly 101.Q) Probable Gestational Age of the Embryo or Fetus, 101.KK (formerly 101.S) Trimester, and 101.LL (formerly 101.T) Viability have been amended. The definitions of 101.I Fire Safety Authority and 101.J Hospital have been deleted. The remaining definitions were renumbered to adjust the codification.

61-12.102.A. License
Section 102.A was amended to delineate the scope of licensure and to prohibit facilities from providing care or services prior to the effective date of licensure.

61-12.102.B. Compliance
New Section 102.B was added to require that all facilities comply with licensing standards as well as applicable local, state, and federal laws, codes, and regulations.

61-12.102.C. Compliance with Structural Standards
New Section 102.C was added to allow facilities licensed at the time of promulgation of these regulations to continue utilizing the previously-licensed structure without modification.

61-12.102.D. Licensed Capacity
New Section 102.D was added to require facilities to obtain authorization from the Department when the number of procedure rooms exceeds the licensed capacity.

61-12.102.E. Issuance and Terms of License (formerly 61-12.102.B)
Section 102.E (formerly 102.B) was relocated and amended to clarify the licensure terms and provisions relating to multiple facilities and license placement within the facility.

61-12.102.F. Facility Name (formerly 61-12.102.J)
Section 102.F was relocated from former Section 102.J and delineates the requirements for facility names.

61-12.102.G. Application (formerly 61-12.Chapter 9)
Section 102.G was relocated from former Chapter 9 and clarifies the requirements of the license application.

61-12.102.H. Licensing Fees (formerly 61-12.102.E)
Section 102.H (formerly 102.E) was relocated and amended to delineate licensure fees, require that the fees be made payable by check or money order, and to allow the Department to charge a fee for plan reviews, construction inspections, and licensing inspections. Section 102.H (formerly 102.E) also requires that the renewal license fee include the renewal license fee plus any outstanding inspection fees.

61-12.102.I. Late Fee
Section 102.I was added to require a late fee of seventy-five dollars ($75.00) or twenty-five percent (25%) of the licensing fee amount, whichever is greater, for failure to submit a renewal application after the licensure expiration date. Section 102.I further adds that continual failure to submit complete and accurate renewal applications and/or fees by the time period specified by the Department may result in an enforcement action.

61-12.102.J. License Renewal (formerly 61-12.102.H)
Section 102.J (formerly 102.H) was amended to require that where a license renewal is delayed due to enforcement actions, the renewal license shall be issued only when the matter has been resolved. Sections 102.J.1 and 102.J.2 were relocated from former Section 102.K and requires that a facility shall request issuance of an amended license by application to the Department prior to change of facility ownership or change of facility location and further requires that changes to the facility name or address shall be accomplished by application or by letter from the licensee.

61-12.102.K. Exceptions to Licensing Standards (formerly 61-102.L)
Section 102.K was relocated from former Section 102.L and clarifies the exceptions to these standards.

61-12.102.C. Effective Date and Terms of License
This section has been deleted as its requirements have been incorporated elsewhere.

61-12.102.D. Separate Licenses
This section has been deleted as unnecessary.

61-12.102.F. Inspections
This section has been deleted as its requirements have been incorporated elsewhere.

61-12.102.G. Initial License
This section has been deleted as unnecessary.

61-12.102.I. Noncompliance
This section has been deleted as unnecessary.

61-12.200. ENFORCEMENT OF REGULATIONS
New Section 200 was added outline procedures for enforcement of the regulation.

61-12.201. General
Section 201 was added to allow the Department to utilize inspections, investigations, consultations, and other documentation to enforce the regulation.

61-12.202. Inspections and Investigations
Section 202.A requires that facilities be inspected prior to initial licensing. Section 202.B states that facilities are subject to inspection or investigation at any time without prior notice by authorized individuals. Section 202.C delineates the requirements of facility accessibility for inspectors. Section 202.D describes the written plan of correction for facilities that are found noncompliant. Section 202.E outlines the confidentiality requirements of reports of inspections or investigations. Section 202.F was added to delineate existing inspection fees.

61-12.300. ENFORCEMENT ACTIONS (formerly 61-12.103)
New section title was added to clarity and consistency.

61-12.301. General (formerly 61-12.103)
Section 301 was relocated from the introductory paragraph of former Section 103.

61-12.302. Violation Classifications
Sections 302.A (formerly 103.A), 302.B (formerly 103.B), 302.C (formerly 103.C), 302.D (formerly 103.D), and 302.E (formerly 103.E) were amended to adjust the codification and delineate the different classes of violations. Section 302.F (formerly 103.F) was amended to update the monetary penalty ranges and conform to codification. Former Section 103.G was deleted as unnecessary.

61-12.400. POLICIES AND PROCEDURES (formerly 61-12.PART II)
Section title amended for clarity and consistency and to update codification. Section 400.A (formerly 201.A) was amended to requiring facilities to develop policies and procedures and delineates the requirements thereof. Section 400.B (formerly 201.B) delineates the required policies for the abortion procedure.

61-12.500. STAFF
New Section 500 title was added for clarity and consistency.

61-12.501. General
Section 501.A requires that the facility have appropriate staff in numbers and training to meet the needs and conditions of the patients at all times. Section 501.B requires that the facility assign duties and responsibilities to all staff members and volunteers in writing. Section 501.C requires that the facility maintain a written employment application for all employees.

61-12.502. Administrator (formerly 61-12.202)
Former Section 202 was rewritten and separated out for easier readability. Section 502.A requires that the facility have an administrator to ensure regulatory compliance. Section 502.B requires that there be a staff member designated in writing to act in the absence of the administrator. Section 502.C delineates the requirements for changing administrators.

61-12.503. Facility Staff
Section 503.A was relocated from former Section 205.A. Section 503.B was relocated from former Section 205.E. Section 503.C was relocated from former Section 205.B.

61-12.504. Physicians
Section 504.A was relocated from former Section 205.C.1. Section 504.B (formerly 205.C.3) requires that a physician sign the discharge order and be readily accessible and available until the past patient has been discharged. Section 504.C was relocated from former Section 205.C.2. Section 504.D was relocated from former Section 205.F.

61-12.505. Nursing Staff
Section 505.A was relocated from former Section 205.D.2. Section 505.B was added to require that the nursing staff be assigned duties consistent with their scope of practice as determined through their licensure and education. Section 505.C was relocated from former Section 205.D.3.

61-12.506. Inservice Training
Section 506.A was added to require that training for the tasks each staff member performs shall be conducted. Section 506.B was added to delineate the specific required training and to require documentation thereof. Section 506.C requires that all licensed nurses possess a valid CPR certificate within three (3) months from the first day on the job in the facility. Section 506.D requires that there be a registered nurse or allied health professional with a valid advanced cardiac life support credential on duty in the facility whenever patients are present. Section 506.E requires that all new staff members have documented orientation to the facility within twenty-four (24) hours of their first day on the job in the facility.

61-12.507. Health Status
Section 507.A requires that all staff members having patient contact have a health assessment within twelve (12) months prior to initial patient contact. Section 507.B requires that the health assessment include a tuberculin skin test. Section 507.C allows for copies of health assessment records when a staff member works at multiple facilities owned by the same licensee.

61-12.600. REPORTING
New Section 600 was added to delineate the facility's reporting requirements.

61-12.601. Accidents and/or Incidents
Section 601.A requires the facility to report and maintain a record of each accident and/or incident for six (6) years. Section 601.B requires the facility to submit an online report of the accident and/or incident to the Department within five (5) days of the occurrence and includes a non-exhaustive list of the accidents and/or incidents requiring reporting. Section 601.C delineates the information required to be reported. Section 601.D requires the facility to report each accident and/or incident resulting in unexpected death or serious injury to the next of kin or responsible party, as well as to the Department, within twenty-four (24) hours.

61-12.602. Abortions and Fetal Deaths
Section 602.A was relocated from former Section 403.A.1 and amended to require that abortions be reported to the Bureau of Vital Statistics within seven (7) days after the abortion. Section 602.A.1 delineates the information required to be reported. Section 602.A.2 delineates the penalties for failing to report abortions. Section 602.B (formerly 403.A.2) was amended to require that fetal deaths be reported pursuant to the standards in Regulation 61-19, Vital Statistics.

61-12.603. Communicable Diseases

New Section 603 was added to require that all cases of reportable diseases be reported to the appropriate county health department in accordance with Regulation 61-20, Communicable Diseases.

61-12.604. Facility Closure
Section 604.A was added to requires facilities to notify the Department in writing prior to the permanent closure of a facility and to require the facility to notify the Department within ten (10) days of closure of the provisions for the maintenance of the facility records. Section 604.B was added to delineate the requirements of facilities temporarily closing.

61-12.605. Zero Census
New Section 605 requires that when there have been no patients in the facility for a period of ninety (90) days or more, the facility shall notify the Department in writing that there have been no patients no later than the one hundredth (100th) day following the date of the last procedure.

61-12.700. PATIENT RECORDS (formerly 61-12.CHAPTER 4)
Section 700 was relocated from former CHAPTER 4 and retitled for clarity and consistency.

61-12.701. Consent of the Patient (formerly 61-12.206)
Section 701.A was relocated from former Section 206. Section 701.B was added to allow for consent to be waived if a physician determines that a medical emergency exists involving the life of or a grave or physical injury to the woman or the pregnancy is a result of incest.

61-12.702. Abortion Performed Upon Minors (formerly 61-12.207)
Section 702 was relocated from former Section 207.

61-12.703. Content (formerly 61-12.401)
Section 703.A was relocated from former Section 401 and amended to delineate the general requirements of records in the facility. Section 703.B (formerly 401.A) was amended to delineate the specific entries required for records of patients in the facility. Section 703.B.1.d (formerly 401.A.1) was amended to require a unique medical record identifying number instead of a social security number. Section 703.C was relocated from former Section 401.C.

61-12.704. Dissemination of Information (formerly 61-12.208)
Section 704 was relocated from former Section 208.

61-12.705. Authentication of Patient Records
Section 705.A requires that each document generated be separately authenticated. Section 705.B delineates the accepted methods of authentication. Section 705.C delineates the requirements for using electronic or computer-generated signature codes for authentication purposes. Section 705.D outlines the requirements for utilizing rubber stamp signatures.

61-12.706. Record Maintenance (formerly 61-12.402)
Section 706 was relocated from former Section 402 and was rewritten and separated out for easier readability. Section 706.A delineates the storage requirements for records. Section 706.B requires that a transfer summary accompany patients when being transferred to an emergency facility. Section 706.C delineates confidentiality requirements for records. Section 706.D refers to requirements for records from third party contractors. Section 706.E allows facilities to determine the storage medium for records. Section 706.F delineates records requirements upon patient discharge. Section 706.G delineates record retention requirements. Section 706.H states that patient records are property of the facility and shall not be removed without a court order.

61-12.800. CARE, TREATMENT, PROCEDURES, AND SERVICES (formerly 61-12.PART III)
Section 800 was relocated from former PART III and retitled for clarity and consistency.

61-12.801. General
Section 801.A requires that care, treatment, procedures, and/or services be performed safely in accordance with orders from physicians or other legally authorized healthcare providers. Section 801.B requires that the facility comply with all current federal, state, and local laws and regulations. Section 801.C requires a written agreement when the facility engages outside sources for facility services.

61-12.802. Limitations of Services Offered by Abortion Facilities (formerly 61-12.302)
Section 802.A (formerly 302.A) was amended to require that Abortion Facilities only perform abortions on patients who are within eighteen (18) weeks from the first day of their last menstrual period unless the Abortion Facility is also licensed by the Department as an Ambulatory Surgical Facility. Section 802.B requires that an Abortion Facility also licensed by the Department as an Ambulatory Surgical Facility perform abortions in accordance with Chapter 41, Title 44 of the South Carolina Code of Laws.

61-12.803. Anesthesia Services
Section 803.A requires that anesthesia be administered pursuant to state law by a qualified anesthesiologist or an individual legally authorized to administer anesthesia. Section 803.B requires that a patient be attended by a physician after being administered anesthesia until the patient may be safely placed under post-procedure supervision by the nursing staff.

61-12.804. Laboratory Services (formerly 61-12.304)
Section 804.A (formerly 304.A) was amended to require that each facility provide or make arrangements for obtaining laboratory services required in connection with the procedure to be performed. Section 804.B (formerly 304.A.2) was amended to require that facilities conducting laboratory tests involving human specimens obtain a CLIA certificate. Section 804.C (formerly 304.B) was amended to require that prior to the procedure, laboratory tests for hematocrit or hemoglobin, and determination of Rh factor shall be administered. Section 804.D (formerly 304.C) was amended to require that testing for chlamydia and gonorrhea, syphilis serology, and papanicolaou be administered. Section 804.E was relocated from former Section 304.D. Section 804.F was relocated from former Section 304.F. Section 804.G was relocated from former Section 304.H.

61-12.900. MEDICATION MANAGEMENT (formerly 61-12.303)
Section 900 was relocated from former Section 303 and retitled for clarity and consistency.

61-12.901. General
Section 901.A requires that medications be properly managed in accordance with local, state, and federal laws and regulations. Section 901.B delineates the requirements for nonlegend medications. Sections 901.C and 901.C.1 were relocated from former Section 303.E.1 and delineate the requirements of the facility physician with regard to controlled substances. Section 901.C.2 was relocated from former Section 303.E.2. Section 901.C.3 requires reporting theft or loss of controlled substances. Section 901.D was relocated from former Section 303.A and delineates the requirements of the emergency kit or cart. Section 901.E was relocated from former Section 303.A.2 and requires that applicable reference materials published within the previous year be available at the facility.

61-12.902. Medication Orders
Section 901.A requires that medications be administered only upon orders of a physician or other legally authorized healthcare provider. Section 902.B delineates the requirements for medication orders. Section 902.C prohibits medications and medical supplies ordered for a specific patient being provided to or administered to any other patient.

61-12.903. Administering Medication (formerly 61-12.303.B)
Section 903.A delineates the requirements of the medication administration record. Section 903.B delineates the requirements of records and record retention for stock controlled substances.

61-12.904. Pharmacy Services
Section 904 requires that facilities maintaining stocks of legend medications for use within the facility obtain and maintain a valid, current, nondispensing drug outlet permit.

61-12.905. Medication Storage (formerly 61-12.303.C)
Section 905.A delineates the general requirements for medication storage. Section 905.B delineates the refrigeration requirements for medications requiring refrigeration. Section 905.C requires that medications be properly stored and safeguarded to prevent access by unauthorized persons. Section 905.D requires that refrigerated medications adhere to temperatures as established by the U.S. Pharmacopeia. Section 905.E prohibits medications from being stored with poisonous substances. Section 905.F requires a review of medication storage areas by the consultant pharmacist at least monthly.

61-12.906. Disposition of Medications
Section 906.A prohibits retention of expired, damaged, or deteriorated medications and delineates the disposal requirements thereof. Section 906.B requires destruction records to be retained for at least two (2) years.

61-12.1000. RIGHTS AND ASSURANCES (formerly 61-12.209)
Section 1000.A requires the facility to comply with all relevant federal, state, and local laws and regulations concerning discrimination. Section 1000.B requires the facility to develop and post conspicuously a grievance or complaint procedure for patients. Section 1000.C requires that care, treatment, procedures, and/or services provided shall be delineated in writing and patients made aware of such as verified by the signature of the patient or responsible party. Section 1000.D delineates the required patient rights. Section 1000.E requires that the Statement of Rights of Patients be posted in a conspicuous place in the facility.

61-12.1100. EMERGENCY PROCEDURES AND DISASTER PREPAREDNESS
New section title added for clarity and consistency.

61-12.1101. Emergency Services (formerly 61-12.305)
Section 1101.A (formerly 305.B) requires appropriate equipment to render emergency resuscitative and life support procedures pending transfer to a hospital. Section 1101.B (formerly 305.C) requires that the facility inform the local ambulance service of the nature of problems which may result from abortions.

61-12.1102. Disaster Preparedness (formerly 61-12.502)
Section 1102 was relocated from former Section 502 and amended to require that a facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.

61-12.1103. Emergency Call Numbers
Section 1103.A requires the facility to post emergency call data for the fire and police departments, ambulance service, and the Poison Control Center in a conspicuous place. Section 1103.B requires that other emergency call information be available, including the contact information of staff members to be notified in case of emergency.

61-12.1200. INFECTION CONTROL AND ENVIRONMENT (formerly 61-12.CHAPTER 6)

Section was retitled for clarity and consistency and renumbered to adjust the codification.

61-12.1201. Staff Practices
Section 1201.A requires the facility to ensure that staff uses preventive measures and practices in compliance with applicable guidelines of entities listed therein. Section 1201.B requires that when a patient has a communicable disease, a physician or other legally authorized healthcare provider shall ensure that the facility has the capability to provide adequate care. Section 1201.C requires the facility to designate a person to coordinate tuberculosis screening of personnel and any other tuberculosis control activities.

61-12.1202. Vaccinations
Section 1202.A requires that all direct care staff be vaccinated with the hepatitis B vaccination series unless the vaccine is contraindicated or an individual is offered the series and declines. Section 1202.B requires the influenza vaccination annually for all direct care staff unless the vaccine is contraindicated or the individual is offered the vaccine and declines. Section 1202.C requires vaccination or evidence of immunity for measles, rubella, and varicella, unless the vaccine is contraindicated or the individual is offered the vaccine and declines.

61-12.1203. Live Animals
Section 1203 prohibits live animals in the facility, but offers an exception for patrol dogs, guide dogs, or other service animals accompanying individuals with disabilities.

61-12.1204. Sterilization Procedures (formerly 61-12.602)
Section 1204.A (formerly 602.C) was amended to require that the accuracy of instrumentation and equipment be tested at least quarterly and periodic calibration and/or preventive maintenance shall be provided as necessary and a history of testing and service maintained. Section 1204.B (formerly 602.D) requires that the dates of sterilization and expiration be marked on all supplies sterilized in the facility. Section 1204.C (formerly 602.A) requires that the facility provide for appropriate storage and distribution of sterile supplies and equipment pursuant to facility policies and procedures. Section 1204.D requires cleaning and disinfection of equipment shall be accomplished.

61-12.1205. Tuberculosis Risk Assessment
Section 1205.A was added to require facilities to conduct an annual tuberculosis risk assessment in accordance with CDC guidelines. Section 1205.B was added to require that a risk classification be part of the risk assessment in determining the need for an ongoing TB screening program for staff and the frequency of screening.

61-12.1206. Staff Tuberculosis Screening (formerly 61-12.204.B)
Section 1206 was relocated from former Section 204.B and amended to delineate the current tuberculosis screening requirements for staff pursuant to CDC guidelines.

61-12.1207. Housekeeping (formerly 61-12.604)
Section 1207.A (formerly 604.A) was amended to require that the facility and its grounds be uncluttered, clean, and free of vermin and offensive odors. Section 1207.B delineates the requirements for interior housekeeping. Section 1207.C delineates the requirements for exterior housekeeping.

61-12.1208. Infectious Waste
Section 1208.A was added to require that facilities register as an infectious waste generator as outlined in Regulation 61-105, Infectious Waste Management. Section 1208.B (formerly 605.D) was amended to require that accumulated waste, including all contaminated dressings, be managed and disposed of in a manner compliant with OSHA standards and in accordance with R.61-105.

61-12.1209. Clean and Soiled Linen and Surgical Clothing (formerly 61-12.603)
Section 1209.A (formerly 603.A) was amended to delineate the requirements for clean, sanitary linen and surgical clothing. Section 1209.B (formerly 603.B) delineates the requirements for storage and collection of soiled linen and surgical clothing.

61-12.1300. QUALITY IMPROVEMENT PROGRAM
Section 1300.A was added to require the facility to establish and implement a written plan for a quality improvement program for patient care. Section 1300.B requires an ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services. Section 1300.C requires that evaluation of patient care be criteria-based. Section 1300.D requires a quarterly review of five percent (5%) of medical records of patients. Section 1300.E requires an evaluation by patients of care and services provided by the facility. Section 1300.F requires the administrator to review findings of the program to ensure that effective corrective actions have been taken. Section 1300.G requires the program to identify and establish indicators of quality care. Section 1300.H requires that the results of the program be submitted to the licensee for review at least annually.

61-12.1400. MAINTENANCE (formerly 61-12.503)
Section 1400 was relocated from former Section 503 and renumbered to adjust the codification.

61-12.1401. General (formerly 61-12.503.A)
Section 1401 was relocated from former Section 503.A and amended to require the facility to document preventative maintenance and comply with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal.

61-12.1402. Equipment Maintenance (formerly 61-12.503.B)
Section 1402 was relocated from former Section 503.B.

61-12.1500. FIRE PROTECTION AND PREVENTION (formerly 61-12.PART VII)
Section was relocated from former PART VII and renumbered to adjust the codification. Former Section 702 was deleted as it is no longer necessary.

61-12.1501. Firefighting Equipment and Systems (formerly 61-12.701)
Section 1501.D (formerly 701.D) was amended to require that fire extinguishers be installed in accordance with the codes and standards referenced in Section 1602. Sections 1501.D.2 (formerly 701.D.2), 1501.F.1 (formerly 701.F.1), and 1501.H (formerly 701.H) were amended to conform to drafting standards.

61-12.1502. Gas Storage (formerly 61-12.703)
Section 1502 was relocated from former Section 703 and amended to require that gases be handled and stored in accordance with the provisions of the codes and standards referenced in Section 1602.

61-12.1503. Fire and Disasters
Section 1503.A requires that the Department be notified immediately regarding any fire in the facility, followed by a complete written report, but not to exceed seventy-two (72) hours from the occurrence of the fire. Section 1503.B requires that an evacuation plan be posted in prominent places and staff members be trained as part of their responsibilities to guide patients to the designated exits. Section 1503.C requires the facility to notify the fire department and the fire code official immediately when a required fire protection system is out of service.

61-12.1600. DESIGN AND CONSTRUCTION (formerly 61-12.PART VIII)
Section 1600 was relocated from former PART VIII and renumbered to adjust the codification.

61-12.1601. General (formerly 61-12.801)
Section 1601 (formerly 801) was amended for clarity and consistency.

61-12.1602. Codes and Standards (formerly 61-12.802)
Section 1601.A (formerly 802.A) was amended to require that facility design and construction comply with applicable provisions of these regulations and the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal. Former Section 802.B was deleted as it is no longer necessary.

61-12.1603. Submission of Plans and Specifications (formerly 61-12.803)
Section 1603.A.1 (formerly 803.A.1) was amended to require that plans and specifications for new buildings, additions, or major alterations be prepared by an architect registered in South Carolina and shall bear his or her seal. Section 1603.B.1 (formerly 803.B.1) was amended to accepted drafting standards. Section 1603.B.2 (formerly 803.B.2) was amended to require that preliminary submissions include a code analysis and life safety plan. Section 1603.D (formerly 803.D) was amended for grammar. Section 1603.E (formerly 803.E) was amended to delineate the existing inspection fees required during the construction phase of a project and includes a chart of all existing construction-related inspection fees. The remaining items were renumbered to adjust the codification.

61-12.1604. Licensure of Existing Structures (formerly 61-12.804)
Section 1604 (formerly 804) was amended to one paragraph for clarity and consistency. Section 1604 (formerly 804) was amended to update a section reference and to require that, if required, plans submitted shall be in accordance with Section 1603.

61-12.1700. PHYSICAL PLANT
New section title was added for clarity and consistency.

61-12.1701. Physical Facilities (formerly 61-12.807)
Section 1701.A was added to require an adequate number of examination and procedure rooms in the facility. Section 1701.B requires that each procedure room be provided a suitable gynecological procedure table with adjustable examination lighting. Section 1701.C requires an area to be provided for use by nurses in preparing medications for patients and keeping medical records. Section 1701.D requires the facility to have an adequate number of recovery rooms. Section 1701.E requires a room for temporary storage of soiled linen and waste in covered containers. Section 1701.F requires an area to accommodate sterilization procedures. Section 1701.G requires a suitable dressing room space for physicians and nursing staff. Section 1701.H requires procedure and recovery rooms to be located on an exit access corridor. Section 1701.I requires an elevator in facilities occupying multi-storied buildings. Section 1701.J requires fixed or portable work surface areas in each procedure room. Section 1701.K requires that doors accessing the facility and procedure rooms be at least thirty-six (36) inches wide and corridors at least forty-eight (48) inches wide. Section 1701.N (formerly 807.O) was amended for drafting standards and to require that cleaning materials and supplies be stored in a safe manner and all harmful agents be locked away. Section 1701.P (formerly 807.Q) was amended for drafting standards. Former Sections 807.S and 807.T have been deleted as unnecessary. Section 1701.V (formerly 807.Y) was amended to require that interior finish materials comply with the codes and standards referenced in Section 1602. The remaining items have been renumbered to adjust the codification.

61-12.1702. Heating and Ventilation (formerly 61-12.807.L)

Section 1702.A (formerly 807.L.1) was amended to require that lighting, heating, and ventilation systems comply with the codes and standards referenced in Section 1602. Section 1702.B was relocated from former Section 807.L.3.

61-12.1703. Water Supply and Plumbing (formerly 61-12.808)
Section 1703.A (formerly 808.A) was amended for drafting standards. Section 1703.B.1 (formerly 808.B.1) was amended to refer to the codes and standards referenced in Section 1602.

61-12.1704. Emergency Power and Lighting Requirements (formerly 61-12.809)
Section 1704.C was added to allow a battery backup with a duration of ninety (90) minutes to satisfy the remaining requirements of Section 1704.

61-12.1705. Location (formerly 61-12.806)
Section 1705 was relocated from former Section 806.

Former 61-12.PART IX. PREREQUISITES FOR INITIAL LICENSURE
Former PART IX has been deleted as these requirements have been incorporated elsewhere in the regulation.

61-12.1800. SEVERABILITY
Section 1800 was added to allow the regulation to remain valid should it be determined that a portion of the regulation be invalid or unenforceable.

61-12.1900. GENERAL (formerly 61-12.PART X)
Section 1900 was relocated from former PART X and amended for grammar.

ATTACHMENT C
TEXT OF PROPOSED AMENDMENTS
REGULATION 61-12, STANDARDS FOR LICENSING ABORTION CLINICS

61-12. Standards for Licensing Abortion ~~Clinics~~Facilities.

Statutory Authority: 1976 Code Sections 44-41-10 and 44-7-110

TABLE OF CONTENTS

~~PART V. FUNCTIONAL SAFETY AND MAINTENANCE.~~
~~SECTION 501. Policies and Procedures.~~
~~SECTION 502. Disaster Preparedness.~~
~~SECTION 503. Maintenance.~~

~~PART VI. INFECTION CONTROL AND SANITATION.~~
~~SECTION 601. General.~~
~~SECTION 602. Sterilization Procedures.~~
~~SECTION 603. Linen and Laundry.~~
~~SECTION 604. Housekeeping.~~
~~SECTION 605. Refuse and Waste Disposal.~~
~~SECTION 606. Outside Areas.~~

~~PART VII. FIRE PROTECTION AND PREVENTION.~~
~~SECTION 701. Fire-Fighting Equipment and Systems.~~
~~SECTION 702. Alarms.~~
~~SECTION 703. Gas Storage.~~

~~PART VIII. DESIGN AND CONSTRUCTION.~~
~~SECTION 801. General.~~
~~SECTION 802. Local and State Codes and Standards.~~
~~SECTION 803. Submission of Plans and Specifications.~~
~~SECTION 804. Licensure of Existing Structures.~~
~~SECTION 805. Minor Alterations in Licensed Facilities.~~
~~SECTION 806. Location.~~
~~SECTION 807. Physical Facilities.~~
~~SECTION 808. Water Supply and Plumbing.~~
~~SECTION 809. Emergency Power and Lighting Requirements.~~

~~PART IX. PREREQUISITES FOR INITIAL LICENSURE.~~

~~PART X. GENERAL.~~
SECTION 100 – DEFINITIONS AND LICENSE REQUIREMENTS
101. Definitions
102. License Requirements

SECTION 200 – ENFORCEMENT OF REGULATIONS
201. General
202. Inspections and Investigations

SECTION 300 – ENFORCEMENT ACTIONS
301. General
302. Violation Classifications

SECTION 400 – POLICIES AND PROCEDURES

SECTION 500 – STAFF
501. General
502. Administrator
503. Facility Staff
504. Physicians

SECTION 1300 – QUALITY IMPROVEMENT PROGRAM

SECTION 1400 – MAINTENANCE
1401. General
1402. Equipment Maintenance

SECTION 1500 – FIRE PROTECTION AND PREVENTION
1501. Firefighting Equipment and Systems
1502. Gas Storage
1503. Fire and Disasters

SECTION 1600 – DESIGN AND CONSTRUCTION
1601. General
1602. Codes and Standards
1603. Submission of Plans and Specifications
1604. Licensure of Existing Structures

SECTION 1700 – PHYSICAL PLANT
1701. Physical Facilities
1702. Heating and Ventilation
1703. Water Supply and Plumbing
1704. Emergency Power and Lighting Requirements
1705. Location

SECTION 1800 – SEVERABILITY

SECTION 1900 - GENERAL

~~PART I~~
~~DEFINITIONS AND REQUIREMENTS FOR LICENSURE~~
SECTION 100 - DEFINITIONS AND LICENSE REQUIREMENTS

~~SECTION 101. Definitions.~~**101. Definitions**

~~—~~For the purposes of these regulations, the following definitions apply:

A. Abortion. The use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman, known to be pregnant, for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

B. Abortion ~~Clinic~~Facility. Any facility, other than a hospital ~~as defined in Section 101.J, in which any second trimester or five or more first trimester abortions per month are performed~~which has been licensed by the Department as legally suitable to perform abortions.

C. Administrator. The staff member designated by the licensee to have the authority and responsibility to manage the facility and be charge of all functions and activities of the facility.

D. Administering Medication. The direct application of a single dose or multi-dose of medication to the body of a patient by injection, ingestion, or any other means.

~~C~~E. Allied Health Professional. A person other than a physician who possesses specialized training and skill acquired by completing certain courses of study or intensive job-related training and, where applicable, has been duly licensed or registered by appropriate licensing or certification agencies. All allied health professionals must be supervised by a physician and/or registered nurse.

~~D~~F. Conception. The fecundation of the ovum by the spermatozoa.

~~E~~G. Consent. A signed and witnessed voluntary agreement to the performance of an abortion.

H. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, or V of the Federal Controlled Substances Act and the South Carolina Controlled Substances Act.

I. Consultation. A visit by Department representatives to provide information to the licensee in order to facilitate compliance with these regulations.

~~F~~J. Department. The South Carolina Department of Health and Environmental Control.

~~G~~K. Emancipated Minor. A minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.

~~H~~L. Fetal Death. Death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

~~I. Fire Safety Authority. The State Fire Marshal, or his designee, who performs facility fire and safety inspections.~~

M. Health Assessment. An evaluation of the health status of a staff member or volunteer by a physician, other legally authorized healthcare provider, or registered nurse, pursuant to written standing orders and/or protocol approved by a physician's signature.

~~J. Hospital. An institution licensed for hospital operation by the Department in accordance with the provisions of Article 3, Chapter 7, Title 44, of the S.C. Code of Laws, 1976, as amended, and that has also been certified by the Department to be a suitable facility for the performance of abortion.~~

~~K~~N. In Loco Parentis. Any person over the age of eighteen (18) who has placed ~~him/herself~~himself or herself in the position of a lawful parent by assuming obligations that are incidental to the parental relationship and has so served for a period of sixty (60) days.

O. Inspection. A visit by Department representative(s) for the purpose of determining compliance with this regulation.

P. Investigation. A visit by Department representative(s) to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to this regulation.

Q. Legally Authorized Healthcare Provider. An individual authorized by law and currently licensed in South Carolina to provide specific treatments, care, or services to patients, such as an advanced practice registered nurse or physician assistant.

R. License. A certificate issued by the Department to an Abortion Facility to provide care, treatment, procedures, surgery, and/or services.

~~L~~S. Licensee. ~~The person, partnership, corporation, association, organization, or professional entity on whom rests the ultimate responsibility and authority for the conduct of the abortion clinic~~The individual, corporation, organization, or public entity that has received a license to provide care, treatment, procedures, surgery, and/or services at an Abortion Facility and with whom rests the ultimate responsibility for compliance with this regulation.

T. Licensed Nurse. An individual currently licensed by the South Carolina Board of Nursing as a registered nurse or licensed practical nurse.

~~M~~U. Medical Emergency. That condition which, on the basis of the physician's good faith judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the risk of her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily functions.

~~N~~V. Minor. A female under the age of seventeen (17).

W. Nonlegend Medication. A mediation that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the laws of this state and the federal government.

X. Physical Examination. An examination of a patient by a physician or other legally authorized healthcare provider that addresses those issues identified in Section 703.B of this regulation.

~~O~~Y. Physician. ~~A person licensed to practice medicine in this State~~A person licensed to practice medicine in the state of South Carolina by the South Carolina Board of Medical Examiners.

~~P~~Z. Pregnancy. The condition of a woman carrying a fetus or embryo within her body as the result of conception.

~~Q~~AA. Probable Gestational Age of the Embryo or Fetus. In the judgment of the attending physician based upon the attending physician's examination and the woman's medical history, with reasonable probability, the gestational age of the embryo or fetus at the time the abortion is planned to be performed. This examination shall be in accordance with The American College of Obstetricians and Gynecologists Standards for Obstetric-Gynecologic Services to calculate gestational age from the first date of the last menstrual period as follows:

Calculation	Weeks of Gestational Age								
Conception	8	10	12	14	16	18	20	22	24
LMP	10	12	14	16	18	20	22	24	26

~~What, in the judgment of the attending physician, based upon the attending physician's examination and the woman's medical history, is with reasonable probability, the gestational age of the embryo or fetus at the time the abortion is planned to be performed. This estimate must be guided by recommendations found in The American College of Obstetricians and Gynecologists Standards for Obstetric Gynecologic Services, i.e., calculated from the first day of the last menstrual period.~~

BB. Procedure Room. A room in which abortion procedures are performed.

~~R~~CC. Products of Conception. Fetal and embryonic tissues resulting from implantation in the uterus.

DD. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care, treatment, procedures, and/or services, identify the ways to improve its performance, and take actions that result in higher quality of care, treatment, procedures, and/or services for the facility's patients.

EE. Recovery Area. An area used for the recovery of patients.

FF. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a thirty-six (36) month period. The time period determinant of repeat violation status is not interrupted by ownership changes.

GG. Responsible Party. A person who is authorized by law to make decisions on behalf of a patient, including, but not limited to, a court-appointed guardian or conservator, or person with a health care power of attorney or other durable power of attorney.

HH. Revocation of License. An action by the Department to cancel or annul a license by recalling, withdrawing, or rescinding its authority to operate.

II. Staff Member. An adult who is a compensated employee of the facility on either a full- or part-time basis.

JJ. Suspension of License. An action by the Department requiring a facility to cease operation for a period of time or to require a facility to cease admitting patients until such time as the Department rescinds that restriction.

~~S~~KK. Trimester. A ~~12-week~~twelve (12) week period of pregnancy.

1. First. The first twelve (12) weeks of pregnancy commencing with conception rather than computed on the basis of the menstrual cycle.

2. Second. That portion of a pregnancy following the ~~12th~~twelfth week and extending through the ~~24th~~twenty-fourth week of gestation.

3. Third. That portion of pregnancy beginning with the ~~25th~~twenty-fifth week of gestation.

~~4. All other references in this regulation to gestational age will refer to that calculated from the first day of the last menstrual period as used in The American College of Obstetricians and Gynecologists Standards for Obstetric-Gynecologic Services. The following is furnished to provide clarification of gestational age:~~

~~Calculation~~	~~Weeks of Gestational Age~~								
~~Conception~~	~~8~~	~~10~~	~~12~~	~~14~~	~~16~~	~~18~~	~~20~~	~~22~~	~~24~~
~~LMP~~	~~10~~	~~12~~	~~14~~	~~16~~	~~18~~	~~20~~	~~22~~	~~24~~	~~26~~

~~T~~LL. Viability. That stage of human development when the fetus is potentially able to live outside of the mother's womb with or without the aid of artificial life support systems. ~~(~~Section 44-41-10(l) of the ~~S.C.~~South Carolina Code of Laws further states that "for the purposes of this chapter, a legal presumption is hereby created that viability occurs no sooner than the twenty-fourth week of pregnancy." The

"twenty-fourth week," as stated in the ~~S.C~~South Carolina Code of Laws, is based on computation from date of conception, ~~i.e.~~for example, the twenty-sixth week from the first day of the last menstrual period.~~)~~

~~SECTION 102 License Requirements.~~**102. License Requirements (II)**

A. License. ~~It shall be unlawful to operate an abortion clinic within South Carolina without possessing a valid license issued annually by the Department~~No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself, such as advertise or market, as an abortion facility in South Carolina without first obtaining a license from the Department. No such party shall provide care, treatment, procedures, surgery, and/or services to patients prior to the effective date of licensure. Upon the Department's determination that such party provides care, treatment, procedures, and/or services without a Department-issued license, the party shall cease operation immediately and ensure safety, health, and well-being of the patients. Current or previous violations of the South Carolina Code of Laws and/or Department regulations may jeopardize the issuance of a licensed or licensed of another facility or addition to an existing facility owned or operated by the violating licensee. (I)

B. Compliance. An initial license shall not be issued to a proposed facility that has not been previously and continuously licensed under Department regulations until the licensee has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility/activity licensed by the Department makes application for another facility or increase in licensed capacity, the currently licensed facility or activity shall be in substantial compliance with the applicable standards prior to the Department issuing a licensed to the proposed facility or an amended license to the existing facility. A copy of the licensing standards shall be maintained at the facility and accessible to all staff members. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

C. Compliance with Structural Standards. Facilities licensed at the time of promulgation of these regulations shall be allowed to continue utilizing the previously-licensed structure without modification.

D. Licensed Capacity. No facility that has been licensed for a set number of procedure rooms shall exceed that number of procedure rooms or establish new care, treatment, procedures, and/or services without first obtaining authorization from the Department. (I)

~~B~~E. Issuance and Terms of License. ~~A license is issued pursuant to the provisions of Section 44-41-10 et seq., of the S.C. Code of Laws of 1976, as amended, and these standards, and shall be posted in a conspicuous place in a public area within the facility. The issuance of a license does not guarantee adequacy of individual care, treatment, personal safety, fire safety or the well-being of any occupant of a facility. A license is not assignable or transferable and is subject to revocation by the Department for failure to comply with the laws and regulations of the State of South Carolina.~~

1. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, treatment, procedures, and/or services, personal safety, fire safety, or the well-being of any occupant of the facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this state.

4. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, such as interstate highways, shall not be considered as dividing unless otherwise adjoining or contiguous property.

6. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

7. A facility shall provide only the care, treatment, procedures, and/or services of which it is capable and equipped to provide, and has been authorized by the Department to provide pursuant to the definition in Section 101.A of this regulation.

~~C. Effective Date and Term of License. A license shall be effective for a 12-month period following the date of issue and shall expire one year following such date; however, a facility that has not been inspected during that year may continue to operate under its existing license until an inspection has occurred.~~

~~D. Separate Licenses. Separate licenses are required for facilities not maintained on the same premises.~~

~~E. Licensing Fees. The initial and annual license fee shall be $500.00 for each licensed facility. Such fee shall be made payable to the Department. Fees are non-refundable.~~

~~F. Inspections. Each facility shall be inspected prior to initial licensure and at least annually thereafter by authorized representatives of the Department.~~

~~1. All licensed facilities are subject to inspection at any time.~~

~~2. Department inspectors shall have access to all properties and areas, objects, records and reports, and shall have the authority to make photocopies of those documents required in the course of inspections or investigations. (II)~~

~~G. Initial License. A new facility, or one that has not been continuously licensed under these or prior standards, shall not provide care to patients until it has been issued an initial license. When it is determined that the facility is in compliance with the requirements of these standards, and a properly completed application and licensing fee have been received by the Department, a license shall be issued. Chapter 9 of this regulation sets forth the prerequisites for initial licensure. (I)~~

~~H. License Renewal. Applicants for an annual license renewal shall file an application with the Department, pay a license fee, and undergo a licensing inspection.~~

~~I. Noncompliance. When noncompliance(s) with the licensing standards exists, the applicant or licensee shall be notified by the Department of the violation(s) and required to provide information as to how and when each violation will be corrected and how future occurrences may be prevented.~~

~~J. Facility Name. No proposed abortion clinic shall be named, nor may any existing abortion clinic have its name changed to, the same or similar name as any other abortion clinic licensed in the State. If it is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.~~

F. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in South Carolina. The Department shall determine if names are similar. If the facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

G. Application. Applicants for a license shall submit to the Department a completed application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes the applicant's oath, assuring that the contents of the application are accurate and true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two (2) of its officers; or in the care of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his or her address is different from that of the facility, and the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. Corporations or partnerships shall be registered with the South Carolina Secretary of State's Office. The following documentation shall be submitted to the Department with the application prior to initial licensing:

1. Notice of Completion (NOC) from the Department's Division of Health Facilities Construction (DHFC);

2. Copy of executed rental or lease agreement (if the proposed licensee is renting or leasing real property);

3. Documentation from the South Carolina Secretary of State's Office, such as, articles of incorporation, certificate of existence, articles of organization, certificate of authenticity, or partnership agreement, as applicable;

4. Business license or letter from the appropriate governing authority stating no business license is required;

5. Zoning letter of approval signed by the zoning authority;

6. Facility floor plan, with dimensions; and

7. Proof of ownership, such as, a copy of the bill of sale, mortgage, or deed, if applicable.

H. Licensing Fees. The initial and renewal license fee shall be five hundred dollars ($500.00) for each licensed facility. The renewal license fee shall include the renewal license fee plus any outstanding inspection fees. Such fees shall be made payable by check or money order to the Department and is not refundable.

I. Late Fee. Failure to submit a renewal application after the license expiration date may result in a late fee of seventy-five dollars ($75.00) or twenty-five percent (25%) of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time period specified by the Department may result in an enforcement action.

J. License Renewal. To renew a license, an applicant shall file an application with the Department and pay a license fee. If the license renewal is delayed due to enforcement action, the renewal license shall be

issued only when the matter has been resolved satisfactorily by the Department or when the adjudicatory process is completed, which is applicable. If an application is denied, a portion of the fee shall be refunded based upon the remaining months of the licensure year.

1. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

a. Change of ownership; or

b. Change of facility location from one geographic site to another.

2. Changes in facility name or address, as notified by the post office, shall be accomplished by application or by letter from the licensee.

~~K. Change of License. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:~~

~~1. Change of ownership by purchase or lease;~~

~~2. Change of facility's name or address.~~

~~L. Exceptions to Licensing Standards. The Department may make exception(s) to these standards where it is determined that the health and welfare of the community require the services of the facility and that the exception(s), as granted, will have no significant adverse impact on the health, safety, or welfare of the facility's patients.~~

K. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where it is determined that the health, safety, and well-being of the patients are not compromised, and provided the standard is not specifically required by statute.

SECTION 200 - ENFORCEMENT OF REGULATIONS

201. General

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

202. Inspections and Investigations

A. An inspection by the Department shall be conducted prior to initial licensing of a facility and subsequent inspections conducted at least annually thereafter as deemed appropriate by the Department. (I)

B. All facilities are subject to inspection or investigation at any time without prior notice by individuals authorized by the Department. (I)

C. Individuals authorized by the Department shall be granted access to all properties and areas, objects, and records, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. (I)

D. An Abortion Facility found noncompliant with the standards of this regulation shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection or investigation. The written plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;

2. The actions taken to prevent recurrences, actual and similar; and

3. The actual or expected completion dates of those actions.

E. Reports of inspections or investigations conducted by the Department, including the facility response, shall be made available upon written request with the redaction of the names of those individuals in the report as provided by S.C. Code Sections 44-7-310 and -315.

F. In accordance with S.C. Code Section 44-7-270, the Department may charge a fee for inspections. The fee for initial and annual routine inspections shall be three hundred fifty dollars ($350.00) plus twenty-five dollars ($25.00) per procedure room. The fee for follow-up inspections shall be two hundred dollars ($200.00) plus twenty-five dollars ($25.00) per procedure room.

~~SECTION 103 Penalties.~~

SECTION 300 - ENFORCEMENT ACTIONS

~~When it determines that a facility is in violation of any statutory provision, rule or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice, may deny, suspend, or revoke licenses, or assess a monetary penalty. Under such conditions, the following shall apply:~~

301. General

When the Department determines that an Abortion Facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice to the licensee, may impose a monetary penalty and/or deny, suspend, and/or revoke its license.

302. Violation Classifications

Violations of the standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or ~~welfare~~well-being of the ~~patients~~persons ~~of~~in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation ~~shall~~ exists after expiration of ~~said~~this time ~~shall~~may be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a ~~direct or immediate relationship to~~negative impact on the health, safety or well-being of the ~~facility's patients~~persons in the facility. The citation of a Class II violation ~~shall~~may specify the time within which the violation is required to be corrected. Each day such violation ~~shall~~ exists after expiration of ~~said~~this time ~~shall~~may be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation shall specify the time within which the violation is required to be corrected. Each day such violation ~~shall~~ exists after expiration of ~~said~~this time ~~shall~~may be considered a subsequent violation.

D. ~~Class I and II violations are indicated by notation after each applicable section, i.e., (I) or (II). Violations of sections that are not annotated in that manner denote Class III violations~~The notations "(I)" or "(II)," placed within sections of this regulation, indicate that those standards are considered Class I or II violations, if they are not met, respectively. Standards not so annotated are considered Class III violations.

E. ~~In arriving at a decision to penalize a facility, the Department will consider the following factors: specific conditions and their impact or potential impact on health, safety or well-being; efforts by the facility to correct; overall conditions; history of compliance; any other pertinent conditions that may be applicable to current statutes and regulations~~In arriving at a decision to take enforcement actions, the Department shall consider the following factors: specific conditions and their impact or potential impact on health, safety, or well-being of the patients; efforts by the facility to correct cited violations; behavior of the licensee that reflects negatively on the licensee's character, such as illegal or illicit activities; overall conditions; history of compliance; and any other pertinent factors that may be applicable to current statutes and regulations. (I)

F. When a decision is made to ~~assess~~impose monetary penalties, the following schedule ~~will~~shall be used as a guide to determine the dollar amount:

~~Frequency of violation of standard within a 24-month period: MONETARY PENALTY RANGES~~

~~FREQUENCY~~	~~CLASS I~~	~~CLASS II~~	~~CLASS III~~
~~1st~~	~~$ 200 – 1000~~	~~$ 100 – 500~~	~~$ 0~~

~~FREQUENCY~~	~~CLASS I~~	~~CLASS II~~	~~CLASS III~~
~~2nd~~	~~500 – 2000~~	~~200 – 1000~~	~~100 – 500~~
~~3rd~~	~~1000 – 5000~~	~~500 – 2000~~	~~200 – 1000~~
~~4th~~	~~5000~~	~~1000 – 5000~~	~~500 – 2000~~
~~5th~~	~~5000~~	~~5000~~	~~1000 – 5000~~
~~6th~~	~~5000~~	~~5000~~	~~5000~~

Frequency of violation of standard within a thirty-six (36) month period:

MONETARY PENALTY RANGES

FREQUENCY	**CLASS I**	**CLASS II**	**CLASS III**
1st	$500-1500	$300-800	$100-300
2nd	1000-3000	500-1500	300-800
3rd	2000-5000	1000-3000	500-1500

4th	5000	2000-5000	1000-3000
5th	5000	5000	2000-5000
6th and more	5000	5000	5000

~~G. Any facility that is dissatisfied with Department decisions may request a hearing pursuant to the Administrative Procedures Act.~~

~~PART II~~
~~ADMINISTRATION AND MANAGEMENT~~
SECTION 400 - POLICIES AND PROCEDURES (II)

~~SECTION 201 Licensee. (II)~~

~~A. The licensee of each facility has the ultimate responsibility for the overall operation of the facility. Every facility shall be organized, equipped, staffed and administered to provide adequate care for each person admitted.~~

A. Policies and procedures addressing each section of this regulation regarding admissions criteria, care, treatment, pre-operative and abortion procedures and/or services, patient rights, provisions for the education of patients as appropriate in pre-procedure care, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation. The licensee or administrator shall annually review all policies and procedures and such review shall be documented. These policies and procedures shall be accessible in each facility at all times, either by hard copy or electronically.

B. The policy for the abortion procedure shall address:

1. Intravenous fluids (IVs);

2. Fluids;

3. Analgesia and/or anesthesia. General anesthesia shall be administered only by a certified registered nurse anesthetist, anesthesiologist, or dentist anesthetist or physician anesthetist;

4. Management of infectious waste from generation to disposal, pursuant to the requirements of Regulation 61-105, Infectious Waste Management;

5. Post-procedure care and recovery room procedures to include emergency care;

6. Provisions for the education of the patient, family and others, as appropriate in pre- and post-procedure care;

7. Plans for follow-up of the patient after discharge from the facility, to include arrangements for a post-procedure visit, and specific instructions in case of emergency;

8. Management and appropriate referral of high-risk conditions;

9. Transfer of patients who, during the course of pregnancy termination, are determined to need care beyond that of the facility;

10. Infection control and sanitation procedures to include duties and responsibilities of the infection control committee that shall include the development and implementation of specific patient care and administrative policies aimed at investigating, controlling, and preventing infections in the facility; and

11. Registration of live birth, death, and fetal death records, pursuant to the requirements of Regulation 61-19, Vital Statistics, when applicable.

~~B. Policies and procedures for operation of the facility shall be formulated and reviewed annually by the licensee of the facility. They shall include but not be limited to:~~

~~1. Purpose of the facility, to include scope and quality of services;~~

~~2. Ensuring compliance with all relevant federal, state, and local laws that govern operations of the facility;~~

~~3. Personnel policies and procedures, to include inservice training requirements;~~

~~4. The person to whom responsibility for operation and maintenance of the facility is delegated and methods established by the licensee for holding such individual responsible;~~

~~5. Provision for annual review and evaluation of the facility's policies, procedures, management and operation;~~

~~6. Provision for a facility wide quality improvement program to evaluate patient care. The program shall be ongoing, have statistical summaries, and have a written plan of implementation.~~

~~7. Patient rights and grievance procedures;~~

~~8. Functional safety and maintenance policies and procedures;~~

~~9. Incident reporting;~~

~~10. Consent must be informed, shall be obtained prior to the procedure, and shall include evidence of an explanation by a physician or allied health professional of the services offered and potential risks. Documentation of the informed consent must be filed in the patient's record.~~

SECTION 500 - STAFF

501. General (II)

A. An Abortion Facility shall have appropriate staff in numbers and training to meet the needs and conditions of the patients at all times. Training and qualifications for the tasks each staff member performs shall be in compliance with all professional standards and applicable federal and state laws.

B. The Abortion Facility shall assign duties and responsibilities to all staff members and volunteers in writing, and shall be in accordance with the Abortion Facility's policy and the staff member's capability.

The assigned duties and responsibilities shall be maintained, reviewed, and revised as changes occur. A copy shall be provided to the employee and volunteer. (I)

C. The Abortion Facility shall maintain a written employment application for all employees. The Abortion Facility shall maintain accurate and current information regarding all staff members of the facility, to include at least a home address, phone number, and health, work, and training background. (I)

~~SECTION 202 Administrator. (II)~~**502. Administrator (II)**

~~An administrator shall be selected by the licensee and shall have the ability and authority to manage and administer the facility. Any change in the position of the administrator shall be reported immediately by the licensee to the Department in writing. An individual shall be appointed in writing to act in the absence of the administrator.~~

A. Each Abortion Facility shall have an administrator who shall be capable of meeting the responsibilities of operating the facility to ensure that it is in compliance with these regulations, and shall demonstrate adequate knowledge of these regulations.

B. The Abortion Facility shall have a staff member designated, by name or position, in writing, to act in the absence of the administrator.

C. The licensee shall notify the Department via telephone or email within seventy-two (72) hours of any change of administrator status. The licensee shall provide the Department in writing within ten (10) days the name of the newly-appointed administrator, documented qualifications as required by Section 502.A, and the effective date of the appointment.

~~SECTION 203 Administrative Records.~~

~~The following administrative documents and references shall be on file in the facility:~~

~~A. Current policies and procedures concerning the operation of the facility; (II)~~

~~B. Current memorandums of agreement and credentialing documentation.~~

~~C. A current copy of these regulations;~~

~~D. Annual elevator safety inspections, if applicable;~~

~~E. Annual heating, ventilation, and air conditioning inspection report.~~

503. Facility Staff (II)

A. Physicians, nurses, and Allied Health Professionals shall constitute the Abortion Facility staff.

B. Allied Health Professionals, working under appropriate direction and supervision, shall be employed to work only within areas where their competency has been established.

C. The Abortion Facility staff shall meet at least quarterly to review and analyze their facility experiences. Staff shall maintain minutes of such meetings.

~~SECTION 204 Personnel. (II)~~

~~Each facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.~~

~~A. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.~~

~~B. Prior to performing job duties, all employees, to include volunteers who have direct patient contact within the clinic, shall have tuberculin skin testing conducted unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux) method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees/volunteers who have no documentation of a negative PPD result during the preceding 12 months, then the two-step procedure (one PPD test with negative result followed one to three weeks later by another PPD test) is required to establish a reliable baseline. If employees/volunteers have complete documentation of a negative PPD during the preceding 12 months (may be a single PPD or a two-step PPD), then a single PPD is acceptable to establish the baseline for current employment.~~

~~1. Persons with negative tuberculin skin tests who have direct contact with patients shall have an annual tuberculin skin test.~~

~~2. There is no need to perform an initial or routine chest X-ray on employees or volunteers with negative tuberculin tests who are asymptomatic.~~

~~3. Personnel with a positive reaction to the skin test shall have no patient contact until certified non-contagious by a physician.~~

~~4. Employees and volunteers with reactions of 10mm and over to the pre-employment tuberculin test, those new employees/volunteers who have previously-documented positive reactions, those with newly converted skin tests and those with symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.), shall be given a chest X-ray to determine whether TB disease is present. If TB disease is diagnosed, appropriate treatment shall be given and contacts examined.~~

~~5. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and will not be allowed to return to work until they have been certified non-contagious by the physician.~~

~~6. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees/volunteers who have patient contact, unless specifically contraindicated. Routine annual chest X-rays of persons with positive reactions do not prevent TB and therefore are not a substitute for preventive treatment nor are required.~~

~~a. Employees and volunteers who complete treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless they have symptoms of TB.~~

~~b. Positive reactors who are unable or unwilling to take preventive treatment need not receive an annual chest X-ray. These individuals must be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.~~

~~7. Post-exposure skin tests should be provided for tuberculin-negative employees/volunteers within 12 weeks after termination of contact for any suspected exposure to a documented case of pulmonary TB.~~

8. A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

C. All professional and allied health professional staff members shall be currently certified with American Red Cross or American Heart Association CPR and capable of recognizing symptoms of distress. A professional or allied health professional staff member who is legally qualified to perform advanced cardiac life support must be present while patients are undergoing abortion procedures/ recovery in the facility. (I)

D. No employee or volunteer of the facility, while afflicted with any infected wounds, boils, sores, or an acute respiratory infection, or any other contagious disease or illness, shall work in any capacity in which there is a likelihood of such person transmitting disease to other individuals.

E. Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, to include, as a minimum, fire safety and other safety measures, medical emergencies, and infection control.

F. Inservice training programs shall be planned and provided for all employees and volunteers to insure and maintain their understanding of their duties and responsibilities. Records shall be maintained to reflect program content and individual attendance. The following training shall be provided at least annually:

1. Infection control, to include as a minimum, universal precautions against blood-borne diseases, general sanitation, personal hygiene such as handwashing, use of masks and gloves, and instruction to staff if there is a likelihood of transmitting a disease to patients or other staff members;

2. Fire protection, to include evacuating patients, proper use of fire extinguishers, and procedures for reporting fires:

3. Confidentiality of patient information and records, and protecting patient rights;

4. Licensing regulations.

G. Job Descriptions.

1. Written job descriptions that adequately describe the duties of every position shall be maintained.

2. Each job description shall include: position title, authority, specific responsibilities and minimum qualifications.

3. Job descriptions shall be reviewed at least annually, kept current and given to each employee and volunteer when assigned to the position and when revised.

H. A personnel file shall be maintained for each employee and for each volunteer. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's orientation, in-service education, appropriate licensure, if applicable, and TB skin testing.

504. Physicians (I)

A. Abortions shall be performed only by physicians who are licensed to practice medicine in South Carolina and properly qualified by training and experience to perform pregnancy termination procedures.

B. A physician shall sign the discharge order and be readily accessible and available until the last patient has been discharged.

C. The Abortion Facility shall have:

1. At least one (1) obstetrics and gynecology (OB/GYN) board-certified physician on staff who has admitting privileges at one (1) or more local hospitals with OB/GYN services to ensure his or her availability to the staff and patients during all operating hours; or

2. A signed written agreement with at least one (1) OB/GYN board-certified physician with admitting privileges at one (1) or more local hospitals with OB/GYN services to ensure his or her availability to the staff and patients during all operating hours.

D. If ultrasonography is conducted in the Abortion Facility, the procedure shall be conducted by a physician or by an ultrasound technician who shall have documented evidence of completion of a training course in ultrasonography.

~~SECTION 205 Clinical Staff (II)~~

~~A. Physicians, nurses, and allied health professionals shall constitute the clinical staff.~~

~~B. The clinical staff shall meet at least quarterly to review and analyze their clinical experiences; minutes shall be maintained of such meetings.~~

~~C. Physicians. (I)~~

~~1. Abortions shall be performed only by physicians who are licensed to practice medicine in this State and who are properly qualified by training and experience to perform pregnancy termination procedures.~~

~~2. The facility shall enter into a signed written agreement with at least one physician board-certified in obstetrics and gynecology (if not one on staff) who has admitting privileges at one or more local hospitals with OB/GYN services to ensure his/her availability to the staff and patients during all operating hours.~~

~~3. A physician must remain on the premises until all patients are stable, and are ready for discharge. A physician must sign the discharge order and be readily accessible and available until the last patient has been discharged.~~

~~D. Nursing.~~

~~1. Nursing care shall be under the supervision of a registered nurse currently licensed in this State.~~

~~2. A registered nurse shall be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period and until discharge by the attending physician.~~

~~3. Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.~~

~~E. Allied health professionals, working under appropriate direction and supervision, may be employed to work only within areas where their competency has been established.~~

~~F. If ultrasonography is conducted in the clinic, the procedure shall be conducted by a physician or by an ultrasound technician who shall have documented evidence of completion of a training course in ultrasonography.~~

~~SECTION 206 Consent of the Patient. (I)~~

~~A physician shall not perform an abortion without first obtaining a signed and dated consent of the pregnant woman pursuant to the provisions of Section 44-41-30 of the S.C. Code of Laws, 1976, as amended.~~

~~SECTION 207 Abortion Performed Upon Minors. (I)~~

~~No person may perform an abortion upon a minor unless consent is obtained pursuant to the provisions of Section 44-41-31 of the S.C. Code of Laws, 1976, as amended.~~

~~SECTION 208 Dissemination of Information. (I)~~

~~Clinics must comply with the Woman's Right to Know Act, Section 44-41-310 et seq., of the S.C. Code of Laws, 1976, as amended, and maintain an adequate supply of current printed material from the Department which has not been altered in content.~~

~~SECTION 209 Patients' Rights (II)~~

~~A. The facility shall have written policies and procedures to assure the individual patient the right to dignity, privacy, safety, and to register complaints with the Department. These patients' rights shall be approved by the licensee.~~

~~B. Each facility shall display in a conspicuous place a copy of the patients' rights. In addition, a copy signed by the patient shall be included in the medical record.~~

505. Nursing Staff (I)

A. At least one (1) registered nurse shall be on duty in the Abortion Facility to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period and until discharge by the attending physician.

B. Nursing staff shall be assigned duties consistent with their scope of practice as determined through their licensure and educational preparation.

C. Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.

506. Inservice Training (I)

A. Staff members shall receive training in accordance with tasks performed in order to provide the care, treatment, procedures, and/or services delineated in Section 800.

B. Documentation of all inservice training shall be signed and dated by both the individual providing the training and the individual receiving the training. The following training shall be provided by appropriate resources, such as licensed, registered, or certified persons, books, electronic media, or otherwise, to all staff members in the context of their job duties and responsibilities, prior to patient contact and at a frequency determined by the facility, but at least annually unless otherwise specified by certificate, for example, cardiopulmonary resuscitation (CPR):

1. Cause, effect, transmission, prevention, and elimination of infections, to include management and care of persons with contagious and/or communicable disease, for example, hepatitis, tuberculosis, or HIV infection;

2. Occupational Safety and Health Administration (OSHA) standards regarding bloodborne pathogens;

3. Confidentiality of patient information and records and the protection of patient rights;

4. Emergency procedures and disaster preparedness within twenty-four (24) hours of their first day on the job in the facility (see Section 1100);

5. Fire response training within twenty-four (24) hours of their first day on the job in the facility;

6. Aseptic techniques such as handwashing and scrubbing practices, proper gowning and masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies; and

7. The requirements of this regulation.

C. All licensed nurses shall possess a valid cardiopulmonary resuscitation (CPR) certificate within three (3) months from the first day on the job in the facility. A staff member with a valid CPR certificate (American Red Cross, American Heart Association Adult CPR training, or the National Safety Council Adult CPR training) shall be on duty whenever patients are in the facility.

D. A registered nurse or allied health professional who possesses a valid advanced cardiac life support credential shall be on duty in the facility whenever patients are in the facility.

E. All new staff members shall have documented orientation to the organization and environment of the facility, specific duties and responsibilities of staff members and direct care volunteers, and patients' needs within twenty-four (24) hours of their first day on the job in the facility.

507. Health Status (I)

A. All staff members who have contact with patients shall have, within twelve (12) months prior to initial patient contact, a health assessment as defined in Section 101.M.

B. The health assessment shall include a tuberculin skin test as described in Section 1206.

C. If a staff member is working at multiple facilities operated by the same licensee, copies of records for tuberculin skin testing and the pre-employment health assessment shall be acceptable at each Abortion Facility. (II)

SECTION 600 – REPORTING

601. Accidents and/or Incidents (II)

A. The Abortion Facility shall report a record of each accident and/or incident occurring at the Abortion Facility or on the facility grounds. A facility's record of each accident and/or incident shall be documented, reviewed, investigated, and if necessary, evaluated in accordance with facility policies and procedures, and retained by the facility for six (6) years.

B. The Abortion Facility shall submit an online report of the accident and/or incident to the Department within five (5) days of the occurrence. Accidents and/or incidents requiring reporting include, but are not limited to:

1. Abuse, neglect, or exploitation (confirmed);

2. Abuse, neglect, or exploitation (suspected);

3. Criminal event against patient;

4. Death, other than fetal death;

5. Fall resulting in fracture of bone or joint;

6. Hospitalization as a result of accident or incident;

7. Post-procedure complications arising as a result of an abortion procedure;

8. Adverse reaction to medication;

9. Severe hematoma;

10. Severe laceration; or

11. Attempted suicide onsite.

C. Reports submitted to the Department shall contain, at a minimum: facility name, facility license number, type of accident or incident, date accident or incident occurred, number of patients directly injured or affected, number of visitors directly injured or affected, witness(es) name(s), identified cause of accident or incident, internal investigation results if cause unknown, a brief description of the accident or incident including the location of occurrence, and treatment of injuries. The report retained by the facility, in addition to the minimum reported to the Department, shall contain: name(s) of patient(s), staff, and/or visitor(s), and the injuries and treatment associated with each patient, staff member, and/or visitor.

D. The Abortion Facility shall report each accident and/or incident resulting in unexpected death or serious injury to the next of kin or responsible party for the affected individual at the earliest practicable hour, not exceeding twenty-four (24) hours. The facility shall notify the Department immediately, not to exceed twenty-four (24) hours, via telephone, email, or facsimile of each accident and/or incident resulting in unexpected death or serious injury. The Abortion Facility shall submit an online report of the accident and/or incident to the Department within five (5) days.

602. Abortions and Fetal Deaths (II)

A. The Abortion Facility shall report any abortion performed in South Carolina pursuant to S.C. Code Section 44-41-450 on the standard form for reporting abortions to the Department's Bureau of Vital Statistics within seven (7) days after the abortion is performed.

1. The Abortion Facility shall include in the report, at a minimum, the requirements set forth in S.C. Code Section 44-41-460.

2. Any Abortion Facility that fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of one thousand dollars ($1000) for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue. Additional penalties for Abortion Facilities are set forth in S.C. Code Section 44-41-460(D).

B. The Abortion Facility shall report live births, deaths, and fetal deaths pursuant to the standards in Regulation 61-19, Vital Statistics.

603. Communicable Diseases (I)

All cases of diseases that are required to be reported to the appropriate county health department shall be accomplished in accordance with Regulation 61-20, Communicable Diseases.

604. Facility Closure

A. Prior to the permanent closure of an Abortion Facility, the Department shall be notified in writing on the intent to close and the effective closure date. Within ten (10) days of the closure, the Abortion Facility shall notify the Department of the provisions for the maintenance of records. On the date of closure, the current original license shall be returned to the Department.

B. In instances where an Abortion Facility temporarily closes, the Department shall be given written notice within a reasonable time in advance of closure. At a minimum, this notification shall include, but not be limited to: the reason for the temporary closure, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the Abortion Facility prior to its reopening. If the Abortion Facility is closed for a period longer than one (1) year, and there is a desire to reopen, the Abortion Facility shall reapply to the Department and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

605. Zero Census

In instances when there have been no patients in the Abortion Facility for any reasons, for a period of ninety (90) days or more, the Abortion Facility shall notify the Department in writing no later than the one hundredth (100th) day following the date of the last procedure. At the time of that notification, the Department shall consider, upon appropriate review of the situation, the necessity of inspecting the Abortion Facility prior to any new admissions and/or readmissions to the facility. The Abortion Facility shall still apply and pay the licensing fee to keep the license active despite being at zero census or temporarily closed. If the Abortion Facility has no patients for a period longer than one (1) year, and there is a desire to reopen, the Abortion Facility shall reapply to the Department shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new Abortion Facility.

SECTION 700 – PATIENT RECORDS

701. Consent of the Patient (I)

A. A physician shall not perform an abortion without first obtaining the signed and dated consent of the pregnant woman pursuant to the provisions of S.C. Code Section 44-41-30. The consent shall include evidence of an explanation by a physician or allied health professional of the services offered and potential risks.

B. Consent shall be waived if:

1. A physician determines that a medical emergency exists involving the life of or grave physical injury to the pregnant woman; or

2. The pregnancy is the result of incest.

702. Abortion Performed Upon Minors (I)

No person shall perform an abortion upon a minor unless consent is obtained pursuant to the provisions of S.C. Code Section 44-41-31.

703. Content (II)

A. The Abortion Facility shall initiate and maintain an organized record for each patient, to include a distinction of patients who are minors. The record shall contain: sufficient, documented information to identify the patient; the person responsible for each patient; and the description of the care, treatment, procedures, and/or services provided. All entries shall be indelibly written, authenticated by the author, and dated.

B. Specific entries or documentation shall include at a minimum:

1. A face sheet with patient identification data, to include but not be limited to;

a. Name;

b. Address;

c. Telephone number;

d. Unique medical record identifying number;

e. Date of birth;

f. Consenting parent or legal guardian’s name when the patient is a minor;

g. If married and living with husband, husband’s name; and

h. Name, address, and telephone number of the person to be notified in the event of an emergency.

2. Signed consent for the procedure;

a. When the patient is a minor, photo identification for the consenting parent is required, along with the minor's birth certificate; and

b. If married and living with her husband, the consent of her husband.

3. Date of initial examination;

4. Date of abortion;

5. Referring and attending physicians' names and phone numbers, if applicable;

6. Complete medical history to include medications currently being taken;

7. Prior to the procedure, a physical examination, to the extent necessary to determine the health status of the patient, and identification of any preexisting conditions or complications, within fifteen (15) days of the procedure, including detailed findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period. The examination shall also include the following laboratory tests and/or procedures;

a. Ultrasonogram;

b. White blood count and determination of blood type, if applicable; and

c. Sickle cell, if applicable.

8. Arrangements made for consultation or referral services, if applicable;

9. Results of diagnostic tests and/or examinations, for example, x-ray, electrocardiography, clinical laboratory, pathology, consultations, and ultrasound;

10. Pre-procedure diagnosis;

11. Management and appropriate referral of high-risk conditions, if applicable;

12. Counselor's notes;

13. Physician's orders;

14. Complete record of abortion procedure to include;

a. Vital signs, such as, temperature, pulse, respiration, and blood pressure, prior to and following the procedure;

b. Name of procedure performed;

c. Anesthetic agent utilized;

d. Name of attending physician performing the procedure;

e. Names of facility assistants in attendance, to include other physicians, physician's assistants, anesthetists, nurses, or specially-trained technicians; and

f. Signature of physician performing the procedure.

15. Nurses' notes;

16. Progress notes to include a post-anesthesia note if general anesthesia is utilized;

17. Attending physician's description of gross appearance of tissue removed;

18. Final diagnosis;

19. Condition on discharge;

20. Post-procedure orders and follow-up care, discharge summary, including conditions at discharge or transfers, instructions for self-care and instructions for obtaining postoperative emergency care;

21. Documented verification that the patient has been presented printed materials as required by the Woman's Right to Know Act at S.C. Code Section 44-41-310;

22. Documented verification of patient rights; and

22. In the case of an unemancipated minor or mentally incompetent person, a copy of the court order or written consent authorizing the abortion.

C. The attending physician shall complete and sign the medical record within seventy-two (72) hours following discharge.

704. Dissemination of Information (I)

Abortion Facilities shall comply with the Woman's Right to Know Act, S.C. Code Sections 44-41-310 et seq., and maintain an adequate supply of current printed materials from the Department which has not been altered in content.

705. Authentication of Patient Records

A. Each document generated by a user shall be separately authenticated.

B. Written signatures or initials and electronic signatures or computer-generated signature codes are acceptable as authentication.

C. In order for an Abortion Facility to employ electronic signatures or computer-generated signature codes for authentication purposes, staff shall be identified who are authorized to authenticate patient records utilizing electronic or computer-generated signatures.

1. At a minimum, the Abortion Facility shall provide authentication safeguards to ensure confidentiality, including, but not limited to, the following:

a. Each user shall be assigned a unique identifier that is generated through a confidential code;

b. The Abortion Facility shall certify in writing that each identifier is kept strictly confidential. This certification shall include a user's commitment to terminate his or her use of an assigned identifier if

it is determined that the identifier has been misused, meaning that the user has allowed another person(s) to use his or her personally-assigned identifier, or that the identifier has otherwise been inappropriately utilized; and

c. The user shall certify in writing that he or she is the only person with access to the identifier and the only person authorized to use the signature code.

2. The authentication system shall include a verification process to ensure that the content of authenticated entries are accurate. The verification process shall include, at a minimum, the following provisions:

a. Blanks, gaps, obvious contradictory statements, or other documentation that require the attention of the authorized user shall be considered authenticated until reviewed and corrected by the user and a revised report issued; and

b. Opportunity shall be provided for the use of electronic or computer-generated signature upon written notice to the individual responsible for the maintenance of patient records.

D. The use of rubber stamp signatures is acceptable under the following conditions:

1. The individual whose signature the rubber stamp represents shall be the only individual who has possession of and utilizes the stamp;

2. The individual places in the administrative offices of the facility a signed statement indicating that he or she is the only individual who has possession of and shall utilize the stamp; and

3. Rubber stamp signatures are not permitted on orders for medications listed as controlled substances pursuant to Regulation 61-4, Controlled Substances.

706. Record Maintenance

A. The Abortion Facility shall have accommodations, space, supplies, and equipment adequate for the protection, security, and storage of patient records.

B. When a patient is transferred to an emergency facility, a transfer summary to include, at a minimum, the diagnosis and medication administration record, shall accompany the patient to the receiving emergency facility at the time of transfer or forwarded immediately after the transfer. Documentation of the information forwarded shall be maintained in the Abortion Facility's patient record. (I)

C. The patient record is confidential. Records containing protected or confidential health information shall be made available only to individuals granted access to that information, in accordance with state and federal laws. The Abortion Facility shall have a written policy designating the persons allowed to access confidential patient information. (II)

D. Records generated by organizations or individuals contracted to the Abortion Facility for care, treatment, procedures, and/or services shall be maintained by the Abortion Facility that has admitted the patient. Appropriate information shall be provided to ensure continuity of care.

E. The Abortion Facility shall determine the medium in which information is stored. The information shall be readily retrievable and accessible by Abortion Facility staff, as needed, and for regulatory compliance inspections.

F. Upon discharge of a patient, the record shall be completed within thirty (30) days and filed in an inactive or closed file maintained by the licensee. Prior to the closing of an Abortion Facility for any reason, the licensee shall arrange for the preservation of records to ensure compliance with these regulations and other applicable law. The licensee shall notify the Department, in writing, describing these arrangements and the location of the records.

G. An Abortion Facility shall maintain all records of patients for at least six (6) years following the discharge of the patient. Other documents required by the regulation, for example, fire drills, shall be retained at least twelve (12) months or until the next Department inspection, whichever is longer.

H. Patient records are the property of the Abortion Facility, and the original patient record shall not be removed without a court order. (II)

~~PART III~~
~~PATIENT CARE~~
SECTION 800 – CARE, TREATMENT, PROCEDURES, AND SERVICES

~~SECTION 301 Policies and Procedures. (II)~~

~~Abortion clinics shall not serve patients whose needs exceed the resources and/or capabilities of the clinic. The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, to include but not limited to:~~

~~A. Admission criteria;~~

~~B. Physician and nurse responsibilities for the services offered;~~

~~C. Specific details regarding the pre-operative procedures performed, to include:~~

~~1. History and physical examination, to include verification of pregnancy, estimation of gestational age, identification of any preexisting conditions or complications;~~

~~2. Special examinations, lab procedures, and/or consultations required, to include ultrasonography required when gestational age is clinically estimated to be equal to or more than 14 weeks from the first day of the last menstrual period as established by the physician's performance of a bimanual physical examination. Policies and procedures should also indicate that ultrasound is recommended when gestational age is equal to or more than 12 weeks from the first day of the last menstrual period as established by the performance of a bimanual physical examination or if the physical examination and clinical evidence is inconclusive as to the gestational age.~~

~~D. The actual abortion procedure, to include the use of:~~

~~1. IV's;~~

~~2. Fluids;~~

~~3. Analgesia/anesthesia. General anesthesia shall be administered only by a certified registered nurse anesthetist, anesthesiologist, or dentist anesthetist or physician anesthetist.~~

~~4. Tissue examination/disposal.~~

~~E. Post-procedure care/recovery room procedures to include emergency care;~~

~~F. Provisions for the education of patient, family and others, as appropriate in pre and post procedure care;~~

~~G. Plans for follow up of patient after discharge from the facility, to include arrangements for post-operative visit, and specific instructions in case of emergency;~~

~~H. Management and appropriate referral of high risk conditions;~~

~~I. Transfer of patients who, during the course of pregnancy termination are determined to need care beyond that of the facility;~~

~~J. Infection control and sanitation procedures to include duties and responsibilities of the infection control committee that shall include the development and implementation of specific patient care and administrative policies aimed at investigating, controlling and preventing infections in the facility;~~

~~K. Registration of fetal death or death certificates, when applicable.~~

801. General (I)

A. Care, treatment, procedures, and/or services shall be provided, given, or performed effectively and safely in accordance with orders from physicians or other legally authorized healthcare providers, and precautions shall be taken for patients with special conditions.

B. The Abortion Facility shall operate in compliance with all current federal, state, and local laws and regulations related to patient care, treatment, procedures, and/or services, and protection.

C. When engaging a source other than the Abortion Facility to provide services normally provided by the facility, for example, staffing, training, maintenance, or housekeeping, the Abortion Facility shall have a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and a statement that these services are to be provided by qualified individuals. All tasks performed by the source shall comply with this regulation with respect to patient care, treatment, procedures, and/or services, confidentiality, and rights. (II)

~~SECTION 302 Limitation of Services Offered by Abortion Clinics (I)~~

~~A. Abortions performed in abortion clinics shall be performed only on patients who are within 18 weeks from the first day of their last menstrual period. Those beyond 18 weeks shall be performed in a hospital. A licensed ambulatory surgical facility that is also licensed as an abortion clinic may perform abortions on patients who are up to 26 weeks after the first day of their last menstrual period.~~

~~B. Clinics performing abortions beyond 14 weeks from the first day of the last menstrual period must meet the requirements of Section 309.~~

802. Limitations of Services Offered by Abortion Facilities (I)

A. Abortion Facilities shall only perform abortions on patients who are within eighteen (18) weeks from the first day of their last menstrual period unless the Abortion Facility is also licensed by the Department as an Ambulatory Surgical Facility.

B. An Abortion Facility also licensed by the Department as an Ambulatory Surgical Facility shall perform abortions in accordance with Chapter 41, Title 44 of the South Carolina Code of Laws.

~~SECTION 303 Pharmaceutical Services. (II)~~

~~Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state and local statutes and regulations.~~

~~A. Emergency Drugs:~~

~~1. Emergency Kit or Emergency Drugs. Each facility shall maintain an emergency kit or stock supply of drugs and medicines for the use of the physician in treating the emergency needs of patients. This kit or medicine shall be stored in such a manner as to prohibit its access by unauthorized personnel. A listing of contents by drawer or shelf shall be placed on the cabinet or emergency cart to allow quick retrieval. Contents shall correspond with the inventory list. Drugs and equipment must be available within the facility to treat, as a minimum, the following conditions: (I)~~

~~a. Cardiac arrest;~~

~~b. Seizure;~~

~~c. Asthmatic attack;~~

~~d. Allergic reaction;~~

~~e. Narcotic toxicity;~~

~~f. Hypovolemic shock;~~

~~g. Vasovagal shock.~~

~~2. Drug Reference Sources. Each facility shall maintain reference sources for identifying and describing drugs and medicines.~~

~~B. Administering Drugs and Medicines. Drugs and medicines shall not be administered to individual patients or to anyone within or outside the facility except by those authorized by law under orders of a physician duly licensed to prescribe drugs. Such orders shall be in writing and signed personally by the physician who prescribes the drug or medicine.~~

~~C. Medicine Storage. Medicines and drugs maintained in the facility for daily administration shall not be expired and shall be properly stored and safeguarded in enclosures of sufficient size that are not accessible to unauthorized persons. Refrigerators used for storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications. A thermometer accurate to ±3 degrees Fahrenheit shall be maintained in these refrigerators. Only authorized personnel shall have access to storage enclosures. Controlled substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws.~~

~~D. Medicine Preparation Area. Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink. This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.~~

~~E. Controlled Substances Registration.~~

~~1. If a stock of controlled drugs is to be maintained at the facility, a physician on the clinic staff shall obtain an individual practitioner South Carolina Controlled Substances Registration and a Drug Enforcement Administration (DEA) Registration as registrant for the facility. This physician shall be responsible for the proper safeguarding and handling of controlled substances within the facility, and shall be certain that all possible control measures are observed and that any suspected diversion or mishandling of controlled substances is reported immediately to the Bureau of Drug Control of the Department.~~

~~2. With a written power of attorney, this physician may grant permission to any other physician who possesses an individual practitioner South Carolina Controlled Substances Registration and a DEA Registration to administer, order for administration, or dispense any controlled substances maintained by the facility.~~

~~F. Records. Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received and/or administered.~~

~~G. Poisonous Substances. All poisonous substances must be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration. (I)~~

803. Anesthesia Services (I)

A. Anesthesia shall be administered according to the South Carolina Code of Laws and the South Carolina Code of Regulations by a qualified anesthesiologist or an individual legally authorized to administer anesthesia.

B. After the patient has been administered a general anesthetic, a physician shall attend the patient until the patient may be safely placed under post-procedure supervision by the nursing staff. The nursing staff shall provide post-procedure supervision and attend the patient until she regains full consciousness or the effects of the anesthetic have sufficiently subsided for the patient to summon aid when needed.

~~SECTION 304 Laboratory Services. (II)~~

~~A. Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88).~~

~~1. Facilities for collecting specimens shall be available on site.~~

~~2. If laboratory services are provided on site they shall be directed by a person who qualifies as a director under CLIA 88 and shall be performed in compliance with CLIA 88 standards.~~

~~B. Prior to the procedure, laboratory tests shall include a recognized urine pregnancy test unless the physician identifies fetal heart beats or fetal movements on physical examination. If positive, the following additional tests are required:~~

~~1. Urinalysis including albumin and glucose examination;~~

~~2. Hematocrit or hemoglobin;~~

~~3. Determination of Rh factor (including the Du variant when the patient is Rh negative); Rh (D) immune globulin (human) shall be administered, prior to discharge, to patients who are determined to be Rh negative.~~

~~C. Other laboratory tests to be administered:~~

~~1. Testing for Chlamydia and gonorrhea;~~

~~2. Syphilis serology shall be offered;~~

~~3. A Papanicolaou procedure shall be offered;~~

~~4. Referral for chest X-ray, if indicated;~~

~~5. Other tests as deemed appropriate by the physician.~~

~~D. Aspirated tissues shall be examined to verify that villi or fetal parts are present; if villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.~~

~~E. A written report of each laboratory test and examination shall be a part of the patient's record.~~

~~F. If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she should be administered fluids and transported immediately to a hospital that routinely performs crossmatches and transfuses patients.~~

~~G. All laboratory supplies shall be monitored for expiration dates, if applicable.~~

~~H. Products of conception resulting from the abortion procedure must be managed in accordance with requirements for pathological waste pursuant to Department R.61-105, Infectious Waste Management Regulations. All contaminated dressings and/or similar waste shall be properly disposed of in accordance with R.61-105.~~

804. Laboratory Services (II)

A. Abortion Facilities shall provide laboratory services or arrangements for obtaining laboratory services required in connection with the procedure to be performed.

B. Abortion Facilities shall obtain a Clinical Laboratories Improvement Amendments (CLIA) certificate from the Department's CLIA Program if they test human specimens for the purpose of providing information for diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

C. The following pre-procedure laboratory tests shall be administered:

1. Hematocrit or hemoglobin; and

2. Determination of Rh factor, including the Du variant when the patient is Rh negative. Rh (D) immune globulin (human) shall be administered, prior to discharge, to patients who are determined to be Rh negative.

D. Other laboratory tests to be administered:

1. Testing for chlamydia and gonorrhea;

2. Syphilis serology; and

3. Papanicolaou.

E. Aspirated tissues shall be examined to verify that villi or fetal parts are present. If villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.

F. If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she shall be administered fluids and transported immediately to a hospital that routinely performs cross-matches and transfuses patients.

G. An Abortion Facility shall manage all products of conception resulting from the abortion procedure pursuant to the requirements of Regulation 61-105, Infectious Waste Management. An Abortion Facility shall manage and dispose of all infectious waste, including contaminated dressings, in accordance with R.61-105.

~~SECTION 305 Emergency Care. (I)~~

~~A. All staff and/or consulting physicians shall have admitting privileges at one or more local hospitals that have appropriate obstetrical/gynecological services or shall have in place documented arrangements approved by the Department for the transfer of emergency cases when hospitalization becomes necessary.~~

~~B. Equipment and services shall be provided to render emergency resuscitative and life support procedures pending transfer of the patient to a hospital.~~

~~C. The facility shall inform, in writing, the local ambulance service which provides emergency care and transport of patients, of the location of the facility, and the nature of medical problems which may result from abortions.~~

~~SECTION 306 Equipment and Supplies. (II)~~

~~There shall be appropriate equipment and supplies maintained for the patients to include but not limited to:~~

~~A. A bed or recliner suitable for recovery;~~

~~B. Oxygen with flow meters and masks or equivalent; (I)~~

~~C. Mechanical suction; (I)~~

~~D. Resuscitation equipment to include, as a minimum, resuscitation bags and oral airways; (I)~~

~~E. Emergency medications, intravenous fluids, and related supplies and equipment; (I)~~

~~F. A clock with a sweep second hand;~~

~~G. Sterile suturing equipment and supplies;~~

H. Adjustable examination light;

I. Containers for soiled linen and waste materials with covers;

J. Refrigerator;

K. Appropriate equipment for the administering of general anesthesia, if applicable.

SECTION 307 Consultation. (II)

Arrangements shall be made for consultation or referral services in the specialties of obstetrics/gynecology, anesthesiology, surgery, psychiatry, psychology, clinical pathology and pathology, clergy, and social services, as well as any other indicated field, to be available as needed.

SECTION 308 Quality Improvement. (II)

A. The facility shall establish and implement a written plan for a quality improvement program for patient care. The plan shall specify the individual responsible for coordinating the quality improvement program and shall provide for ongoing monitoring of staff and patient care services.

B. There shall be an ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services.

C. Evaluation of patient care throughout the facility shall be criteria based, so that certain actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

D. The quality improvement process shall incorporate quarterly review of a minimum of five per cent of medical records of patients undergoing procedures during a given quarter, but not less than five records shall be reviewed.

E. The quality improvement process shall include evaluation by patients of care and services provided by the facility. If the families of patients are involved in the care and services provided by the facility, the quality improvement process shall include a means for obtaining input from families of patients.

F. The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including as a minimum, policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

G. The quality improvement program shall identify and establish indicators of quality care, specific to the facility, that shall be monitored and evaluated.

H. The results of the quality improvement program shall be submitted to the licensee for review at least annually and shall include at least the deficiencies found and recommendations for corrections or improvements. Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

SECTION 309 Requirements for Clinics Performing Abortions Beyond 14 Weeks. (I)

~~Clinics which perform abortions beyond 14 weeks from the first day of the last menstrual cycle shall, in addition to those requirements in all other sections of this regulation, have the following in place:~~

~~A. Physicians shall be board-certified or a candidate for board-certification in obstetrics and gynecology, general surgery, or family practice;~~

~~B. Physicians shall have admitting privileges at one or more local hospitals that have appropriate obstetrical/gynecological services;~~

~~C. Laryngoscopes, endotracheal tubes, and defibrillator;~~

~~D. Laboratory tests/procedures shall include:~~

~~1. White blood count and determination of blood type;~~

~~2. Sickle cell, when indicated;~~

~~3. Ultrasonogram.~~

SECTION 900 – MEDICATION MANAGEMENT (I)

901. General

A. An Abortion Facility shall manage, secure, store, and administer all medications, including controlled substances, medical supplies, intravenous solutions, and those items necessary for the rendering of first aid in accordance with local, state, and federal laws and regulations. This includes the securing, storing, and administering of medications, medical supplies, first aid supplies, biologicals and their disposal when discontinued or expired, or at discharge, death, or transfer of a patient.

B. An Abortion Facility may retain nonlegend medications available without a prescription and label such medications as stock in the Abortion Facility for administration as ordered by a physician or other legally authorized healthcare provider.

C. Abortion Facilities using controlled substances shall obtain a controlled substances registration from the Department's Bureau of Drug Control and a controlled substances registration from the federal Drug Enforcement Administration (DEA). The registrations shall be displayed in a conspicuous location within the Abortion Facility.

1. The Abortion Facility physician shall be responsible for the proper safeguarding and handling of controlled substances within the Abortion Facility, and shall be certain that all possible control measures are observed and that any suspected diversion or mishandling of controlled substances is reported immediately to the Bureau of Drug Control of the Department.

2. With a written power of attorney, the Abortion Facility physician may grant permission to any other physician who possesses an individual practitioner South Carolina Controlled Substances Registration and a DEA Registration to administer, order for administration, or dispense any controlled substances maintained by the Abortion Facility.

3. Operation of any Abortion Facility registered with the Department's Bureau of Drug Control and the DEA shall include reporting any theft or loss of controlled substances to local law enforcement and to the Bureau of Drug Control within three (3) working days of the discovery of the loss or theft. Operation

of any Abortion Facility permitted by the South Carolina Board of Pharmacy shall include reporting the loss or theft of drugs or devices within three (3) working days of the discovery of the loss or theft.

D. Each Abortion Facility shall maintain, upon the advice and written approval of the physician or consultant pharmacist, an emergency kit or cart of lifesaving medicines and equipment for the use of physicians or other legally authorized healthcare providers in treating the emergency needs of patients.

1. The kit or cart shall be sealed and stored in such a manner as to prevent unauthorized access and to ensure a proper environment for preservation of the medications within, but in such a manner as to allow immediate access.

2. The exterior of each emergency medication kit or cart shall have displayed the following information:

a. "For Emergency Use Only"; and

b. Name, address, and telephone number of the consultant pharmacist.

3. Whenever the kit or cart is opened, the Abortion Facility shall be restock and reseal the kit or cart within three (3) days to prevent risk of harm to a patient.

4. Medications used from the kit or cart shall be replaced pursuant to orders from a physician or other legally authorized healthcare provider according to Abortion Facility policy.

5. Contents of each section of the kit or cart shall be listed and maintained on or in the kit or cart, and shall correspond to the list. Documentation of monthly checks of expiration dates of medications and supplies is to be retained by the Abortion Facility for a period of two (2) years.

a. An Abortion Facility shall have drugs and equipment available within the Abortion Facility to treat, at a minimum, the following conditions:

1. Cardiac arrest;

2. Seizure;

3. Asthmatic attack;

4. Allergic reaction;

5. Narcotic toxicity;

6. Hypovolemic shock; and

7. Vasovagal shock.

b. Appropriate equipment and supplies shall be available to include, but not be limited to,:

1. Oxygen with flow meters and masks or equivalent;

2. Mechanical suction;

3. Resuscitation equipment to include, at a minimum, resuscitation bags and oral airways;

4. Sterile suturing equipment and supplies;

5. Laryngoscopes;

6. Endotracheal tubes; and

7. Defibrillator.

E. An Abortion Facility shall have applicable reference materials published within the previous year available at the Abortion Facility to provide staff members with adequate information concerning medications.

902. Medication Orders

A. Medications, including oxygen, shall be administered in the Abortion Facility to patients only upon orders of a physician or other legally authorized healthcare provider.

B. All orders, including verbal, shall be received only by licensed nurses or legally authorized healthcare providers, and shall be authenticated and dated by a physician or other legally authorized healthcare provider pursuant to the Abortion Facility's policies and procedures, but no later than seventy-two (72) hours after the order is given. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the physician or other legally authorized healthcare provider and the individual receiving the order.

C. Medications and medical supplies ordered for a specific patient shall not be provided to or administered to any other patient.

903. Administering Medication

A. Each medication dose administered shall be properly recorded in the patient's record as the medication is administered. The medication administration record shall include the name of the medication, dosage, mode of administration, date, time, and the signature of the individual administering the medication. Initials may be utilized when recording administration, provided the identification of the individual's initials is located within the record.

B. Records shall be maintained of all stock controlled substances that indicate an accounting of all items received and/or administered in such a manner that the disposition of each dose of any particular item may be readily traced. Records shall be maintained for a minimum of two (2) years.

904. Pharmacy Services

Abortion Facilities that maintain stocks of legend medications and biologicals for patient use within the Abortion Facility shall obtain and maintain a valid, current, nondispensing drug outlet permit from the South Carolina Board of Pharmacy, displayed in a conspicuous location in the Abortion Facility, and have a consultant pharmacist on-call during Abortion Facility operating hours.

905. Medication Storage

A. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety, and security. Medications shall be stored in accordance with manufacturer's directions and in accordance with all applicable state and federal laws and regulations.

B. Refrigerators used for storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications. A thermometer accurate to plus or minus two (2) degrees Fahrenheit shall be maintained in these refrigerators.

C. Medications shall be properly stored and safeguarded to prevent access by unauthorized persons. Expired or discontinued medications shall not be stored with current medications. Storage areas shall be of sufficient size for clean and orderly storage, and shall be locked when not under direct observation by a licensed healthcare provider. Controlled substances shall be stored under double lock and key, and in accordance with applicable state and federal regulations. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf-life.

D. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U.S. Pharmacopeia, thirty-six to forty-six (36–46) degrees Fahrenheit, or according to the recommendations of the manufacturer. Food and drinks shall not be stored in the same refrigerator in which medications and biologicals are stored. Blood and blood products may be stored in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals.

E. Medications shall be stored:

1. Separately from poisonous substances, blood, or body fluids;

2. In a manner that provides for separation between oral and topical medications; and

3. Separately from food.

F. Review of medication storage areas shall be conducted by the consultant pharmacist or his or her designee on at least a monthly basis. Records of such reviews shall be retained by the Abortion Facility for at least two (2) years.

906. Disposition of Medications

A. Medications, medical supplies, and those items necessary for the rendering of first aid shall not be retained in stock after the expiration date on the label and no contaminated or deteriorated medications shall be maintained. Expired, damaged, or deteriorated medications and biologicals shall be disposed of in the following manner:

1. When non-controlled legend medications are destroyed, the following shall be documented: date of destruction, medication name, strength, quantity, mode of destruction, and the name of the individual performing the destruction and a witness. The medications may also be disposed of by returning them to the dispensing pharmacy and obtaining a receipt from the pharmacy.

2. The destruction of controlled substances shall be accomplished pursuant to the requirements of Regulation 61-4, Controlled Substances.

B. Destruction records shall be retained by the Abortion Facility for at least two (2) years.

SECTION 1000 – RIGHTS AND ASSURANCES (II)

A. The Abortion Facility shall comply with all relevant federal, state, and local laws and regulations concerning discrimination, for example, Title VII, Section 601 of the Civil Rights Act of 1964, and ensure that there is no discrimination with regard to source of payment in the recruitment or location of patients, acceptance or provision of services to patients or potential patients, provided that payment offered is not less than the cost of providing services.

B. The Abortion Facility shall develop and post in a conspicuous place in a public area of the Abortion Facility a grievance or complaint procedure to be exercised on behalf of patients that includes the address and phone number of the Department and a provision prohibiting retaliation should the grievance right be exercised.

C. Care, treatment, procedures, and/or services provided by the Abortion Facility, and the charges for such, shall be delineated in writing. Patients shall be made aware of such charges and services, as verified by the signature of the patient or responsible party.

D. Patient rights shall be guaranteed, prominently displayed, and the Abortion Facility shall inform the patient of these rights to include, at a minimum,:

1. The care, treatment, procedures, and/or services to be provided;

2. Informed consent for care, treatment, and/or services;

3. Freedom from mental and physical abuse and exploitation;

4. Privacy while being treated and while receiving care;

5. Respect and dignity in receiving care, treatment, procedures, and/or services;

6. Confidentiality and privacy of records. Written consent by the patient shall be obtained prior to release of information except to persons authorized by law. The Abortion Facility shall establish policies to govern access and duplication of the patient's record;

7. The right to conduct private telephone conversations with family and friends. When restrictions are necessary because of therapeutic or practical reasons, these reasons shall be documented, explained to the patient and family and reevaluated at least monthly; and

8. The right to be fully informed, as evidenced by the patient's written acknowledgement of these rights, of all rules and regulations regarding patient conduct and responsibilities.

E. The Statement of Rights of Patients shall be posted in a conspicuous place in the Abortion Facility.

~~PART IV~~
~~MEDICAL RECORDS AND REPORTS~~

~~SECTION 401 Medical Records. (II)~~

~~Medical records shall be maintained for all patients examined or treated in the clinic. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the~~

~~compilation and retrieval of information. All information shall be centralized in the patient's medical record. All entries shall be legibly written or typed, dated and signed.~~

~~A. The record shall include as a minimum the following information:~~

~~1. A face sheet with patient identification data, to include but not be limited to: name, address, telephone number, social security number, date of birth, father's and mother's names when patient is a minor, husband's name, and name, address and telephone number of person to be notified in the event of an emergency;~~

~~2. Signed consent for the procedure;~~

~~3. Date of initial examination;~~

~~4. Date of abortion;~~

~~5. Referring and attending physicians' names and phone numbers, if applicable;~~

~~6. Complete medical history to include medications currently being taken;~~

~~7. Physical examination, to the extent necessary to determine the health status of the patient, within 15 days of the procedure, including detail of findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period;~~

~~8. Results of diagnostic tests and/or examinations, e.g., X-ray, electrocardiography, clinical laboratory, pathology, consultations, ultrasound;~~

~~9. Pre-operative diagnosis;~~

~~10. Counselor's notes;~~

~~11. Physician's orders;~~

~~12. Complete record of abortion procedure to include:~~

~~a. Vital signs, i.e., temperature, pulse, respiration, and blood pressure, prior to and following the procedure;~~

~~b. Name of procedure performed;~~

~~c. Anesthetic agent utilized;~~

~~d. Name of attending physician performing the procedure;~~

~~e. Names of clinical assistants in attendance, to include other physicians, physician's assistants, anesthetists, nurses, or specially trained technicians;~~

~~f. Signature of physician performing the procedure.~~

~~13. Nurses' notes;~~

~~14. Progress notes to include a post-anesthesia note if general anesthesia is utilized;~~

~~15. Attending physician's description of gross appearance of tissue removed;~~

~~16. Final diagnosis;~~

~~17. Condition on discharge;~~

~~18. Post-op orders and follow-up care;~~

~~19. Documented verification that the woman has been presented printed materials as required in the Woman's Right-to-Know Act;~~

~~20. In the case of an unemancipated minor or mentally incompetent person, a copy of the court order or written consent authorizing the abortion.~~

~~B. The attending physician must complete and sign the medical record within 72 hours following discharge.~~

~~SECTION 402 Records Storage.~~

~~All records shall be treated as confidential and shall be stored in a safe location for a minimum of 10 years. When records are stored in a location other than the clinic, and upon closure of the clinic, for any reason, the medical records shall be stored in a safe location for that minimum period, with the Department informed of that location. The medium in which the records are stored, e.g., optical disk, microfiche, is a facility decision.~~

~~SECTION 403 Reports. (II)~~

~~A. The following shall be reported to Vital Records and Public Health Statistics of this Department:~~

~~1. Any abortion performed, to be reported by the performing physician on the standard form for reporting abortions, within seven days after the abortion is performed;~~

~~2. A fetal death when the fetus has completed or passed the age or weight requiring a report, pursuant to the standards in Department R. 61-19, Vital Statistics.~~

~~B. A record of each accident or incident occurring in the facility which involves patients, staff, or visitors, including medication errors and adverse drug reactions, shall be prepared immediately. Accidents or incidents resulting in serious injury shall be reported, in writing, to the Department within 10 days of the occurrence; if a death occurs, other than a fetal death, it shall be reported to the Department not later than the next Department work day (Monday through Friday). Accidents and incidents that must be reported include, but are not limited to:~~

~~1. Those leading to hospitalization;~~

~~2. Those leading to death, other than a fetal death;~~

~~3. Adverse drug reactions.~~

SECTION 1100 – EMERGENCY PROCEDURES AND DISASTER PREPAREDNESS

1101. Emergency Services (I)

A. Appropriate equipment and services shall be provided to render emergency resuscitative and life support procedures pending transfer to a hospital.

B. The Abortion Facility shall inform the local ambulance services which provides emergency care and transport of patients the nature of medical problems which may result from abortion procedures.

1102. Disaster Preparedness (II)

An Abortion Facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.

1103. Emergency Call Numbers (I)

A. The Abortion Facility shall post emergency call data in a conspicuous place and shall include, at a minimum, the telephone numbers of fire and police departments, ambulance service, and the Poison Control Center.

B. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of staff members to be notified in case of emergency.

~~PART V~~
~~FUNCTIONAL SAFETY AND MAINTENANCE~~

~~SECTION 501 Policies and Procedures.~~

~~A. Written policies and procedures shall be developed to enhance safety within the facility and on its grounds and to minimize hazards to patients, staff and visitors.~~

~~B. The policies and procedures shall include, but not be limited to:~~

~~1. Safety rules and practices pertaining to personnel, equipment, gases, liquids, drugs, supplies and services;~~

~~2. Provisions for reporting and investigating accidental events regarding patients, visitors and personnel and corrective action taken;~~

~~3. Provisions for disseminating safety-related information to employees and users of the facility;~~

~~4. Provision for syringe and needle handling and storage.~~

~~5. Provisions for managing infectious waste from generation to disposal according to Regulation 61-105.~~

~~SECTION 502 Disaster Preparedness.~~

~~A. The facility shall have posted, in conspicuous places throughout the facility, a plan for evacuation of patients, staff, and visitors in case of fire or other emergency. (I)~~

~~B. A facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.~~

~~SECTION 503 Maintenance.~~

~~A. Facility Maintenance. A facility's structure, its component parts, and all equipment such as elevators, furnaces and emergency lights, shall be kept in good repair and operating condition. Areas used by patients shall be maintained in good repair and kept free of hazards. All wooden surfaces shall be sealed with non-lead-based paint, lacquer, varnish, or shellac that will allow sanitization.~~

~~B. Equipment Maintenance. When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to insure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before returning it to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.~~

SECTION 1200 – INFECTION CONTROL AND ENVIRONMENT

1201. Staff Practices (I)

A. The Abortion Facility shall ensure that staff uses preventive measures and practices that are in compliance with applicable guidelines of the Bloodborne Pathogens Standards of the Occupational Safety and Health Act (OSHA) of 1970; the Centers for Disease Control and Prevention (CDC) Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's Guidelines for Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings and Regulation 61-105, Infectious Waste Management; and other applicable federal, state, and local laws and regulations.

B. If a patient or potential patient has a communicable disease, a physician or other legally authorized healthcare provider shall ensure that the Abortion Facility has the capability to provide adequate care and prevent the spread of the disease, or transfer the patient to an appropriate healthcare provider if necessary.

C. The Abortion Facility shall designate, in writing, a person to coordinate tuberculosis screening of personnel and any other tuberculosis control activities.

1202. Vaccinations (I)

A. All direct care staff who perform tasks involving contact with blood, blood-contaminated body fluids, other body fluids, or sharps shall have the hepatitis B vaccination series unless the vaccine is contraindicated or an individual is offered the series and declines. In either case, the decision shall be documented. Each staff member who elects vaccination shall have completed the initial dose of the three (3) dose series within thirty (30) days of employment at the Abortion Facility.

B. All direct care staff shall have an annual influenza vaccination unless the vaccine is contraindicated or an individual is offered the vaccine and declines. In either case, the decision shall be documented.

C. All direct care staff shall have been vaccinated or have evidence of immunity for measles, rubella, and varicella prior to patient contact unless contraindicated or offered and declined. In either case, the decision shall be documented. Immunity to mumps is recommended.

1203. Live Animals

Live animals shall not be permitted in Abortion Facilities.

EXCEPTION: This standard does not apply to patrol dogs accompanying security or police officers, guide dogs, or other service animals accompanying individuals with disabilities.

1204. Sterilization Procedures (I)

A. An Abortion Facility shall have sterilizing equipment of appropriate type and of adequate capacity to properly sterilize instruments, operating room materials, and laboratory equipment and supplies. The sterilizing equipment shall have approved control and safety features. The accuracy of instrumentation and equipment shall be tested at least quarterly. Periodic calibration and/or preventive maintenance shall be provided as necessary and a history of testing and service maintained.

1. The Abortion Facility shall have documentation of each load run daily. A biological test of the autoclave shall be run daily and the results maintained in a log by the Abortion Facility.

2. Each separate package of instruments to be sterilized must have internal and external chemical indicators.

3. The accuracy of instrumentation and equipment shall be provided by periodic calibration and/or preventive maintenance as necessary, but not less than annually, and a log maintained by the Abortion Facility.

B. The dates of sterilization and expiration shall be marked on all supplies sterilized in the Abortion Facility.

C. The Abortion Facility shall provide for appropriate storage and distribution of sterile supplies and equipment pursuant to facility policies and procedures.

D. Abortion Facility operations shall include cleaning and disinfection, as needed, of equipment used and/or maintained in each area, appropriate to the area and the equipment's purpose or use. A recognized method of monitoring disinfectant performance shall be employed. Disinfectants, for example, glutaraldehyde, Cidex, Sporox, hydrogen peroxide, shall be tested and maintained according to manufacturer's instructions and shall include, at a minimum, a record of readings or tests and change dates of the disinfectant solution.

1205. Tuberculosis Risk Assessment (I)

A. All Abortion Facilities shall conduct an annual tuberculosis (TB) risk assessment in accordance with CDC guidelines to determine the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

B. The risk classification, such as low risk or medium risk, shall be used as part of the risk assessment to determine the need for an ongoing TB screening program for staff and patients and the frequency of screening. A risk classification shall be determined for the entire Abortion Facility. In certain settings, such as, healthcare organizations that encompass multiple sites or types of services, specific areas defined by geography, functional units, patient population, job type, or location within the setting, may have separate risk classifications.

1206. Staff Tuberculosis Screening (I)

A. Tuberculosis Status. Prior to date of hire or initial patient contact, the tuberculosis status of direct care staff shall be determined in the following manner in accordance with the applicable risk classification:

B. Low Risk:

1. Baseline two-step Tuberculin Skin Test (TST) or a single Blood Assay for Mycobacterium tuberculosis (BAMT): All staff, within three (3) months prior to contact with patients, unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline.

2. Periodic TST or BAMT is not required.

3. Post-exposure TST or a BAMT for staff upon unprotected exposure to M. tuberculosis: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case or suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to twelve (8 to 12) weeks after that exposure to M. tuberculosis ended.

C. Medium Risk:

1. Baseline two-step TST or a single BAMT: All staff, within three (3) months prior to contact with patients, unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST, or the single BAMT, can be administered to serve as the baseline.

2. Periodic testing (with TST or BAMT): Annually, of all staff who have risk of TB exposure and who have previous documented negative results. Instead of participating in periodic testing, staff with documented TB infection (positive TST or BAMT) shall receive a symptom screen annually. This screen shall be accomplished by educating the staff about symptoms of TB disease, including the staff responses, documenting the questioning of the staff about the presence of symptoms of TB disease, and instructing the staff to report any such symptoms immediately to the administrator or director of nursing. Treatment for latent TB infection (LTBI) shall be considered in accordance with CDC and Department guidelines and, if recommended, treatment completion shall be encouraged.

3. Post-exposure TST or a BAMT for staff upon unprotected exposure to M. tuberculosis: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case or suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to twelve (8 to 12) weeks after that exposure to M. tuberculosis ended.

D. Baseline Positive or Newly Positive Test Result:

1. Staff with a baseline positive or newly positive test result for M. tuberculosis infection, such as TST or BAMT, or documentation of treatment for latent TB infection (LTBI) or TB disease or signs or symptoms of tuberculosis, such as, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease, or evaluate an interpretable copy taken within the previous three (3) months. These staff members shall be evaluated for the need for treatment of TB disease or

latent TB infection (LTBI) and shall be encouraged to follow the recommendations made by a physician with TB expertise, such as the Department's TB Control program.

2. Staff who are known or suspected to have TB disease shall be excluded from work, required to undergo evaluation by a physician or legally authorized healthcare provider, and permitted to return to work only with approval by the Department TB Control program. Repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician or legally authorized healthcare provider.

1207. Housekeeping (II)

A. The Abortion Facility and its grounds shall be uncluttered, clean, and free of vermin and offensive odors.

B. Interior housekeeping shall, at a minimum, include:

1. Cleaning each specific area of the Abortion Facility. Dry sweeping and dusting shall be prohibited in restricted areas as identified in facility policies and procedures; and

2. Cleaning of operating or procedure rooms in accordance with established written procedures after each operation or procedure.

C. Exterior housekeeping shall, at a minimum, include:

1. Cleaning of all exterior areas, for example, porches and ramps, and removal of safety impediments, such as snow and ice; and

2. Keeping the Abortion Facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

3. Containers for garbage and refuse shall be covered and stored outside and placed on an approved platform.

1208. Infectious Waste (I)

A. The Abortion Facility shall register as an infectious waste generator as outlined in Regulation 61-105, Infectious Waste Management.

B. Accumulated waste, including all contaminated dressings, shall be managed and disposed of in a manner compliant with OSHA Bloodborne Pathogens Standards and pursuant to the requirements of R.61-105.

1209. Clean and Soiled Linen and Surgical Clothing (II)

A. The Abortion Facility shall have a supply of clean, sanitary linen and surgical clothing available at all times at the Abortion Facility. In order to prevent contamination by dust or other airborne particles or organisms, clean linen and surgical clothing shall be stored and transported in a sanitary manner, such as, enclosed and covered. Linen and surgical clothing storage rooms shall be used only for the storage of linen and surgical clothing. Clean linen and surgical clothing shall not be stored with other items.

B. Soiled linen and surgical clothing.

1. Provisions shall be made for collecting, transporting, and storing soiled linen and surgical clothing; and

2. Soiled linen and surgical clothing shall be kept in enclosed and/or covered containers.

SECTION 1300 – QUALITY IMPROVEMENT PROGRAM (II)

A. The Abortion Facility shall establish and implement a written plan for a quality improvement program for patient care. The plan shall specify the individual responsible for coordinating the quality improvement program and shall provide for ongoing monitoring of staff and patient care services.

B. The Abortion Facility shall have an ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services.

C. Evaluation of patient care throughout the Abortion Facility shall be criteria-based, so that certain actions are taken or triggered when specific quantified, predetermined levels or outcomes or potential problems are identified.

D. The quality improvement process shall incorporate quarterly review of a minimum of five percent (5%) of medical records of patients undergoing procedures during a given quarter, but not less than five (5) records shall be reviewed.

E. The quality improvement process shall include evaluation by patients of care and services provided by the Abortion Facility. If the families of patients are involved in the care and services provided by the Abortion Facility, the quality improvement process shall include a means for obtaining input from families of patients.

F. The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including at a minimum, policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

G. The quality improvement program shall identify and establish indicators of quality care, specific to the Abortion Facility that shall be monitored and evaluated.

H. The results of the quality improvement program shall be submitted to the licensee for review at least annually and shall include at least the deficiencies found and recommendations for corrections or improvements. Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

SECTION 1400 – MAINTENANCE (II)

1401. General

The Abortion Facility equipment and building components, such as doors, windows, lighting fixtures, plumbing fixtures, shall be in good repair and operating condition. The Abortion Facility shall document preventative maintenance. The Abortion Facility shall comply with the applicable provisions of these regulations and the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal.

1402. Equipment Maintenance

When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with the manufacturer's specifications at periodic intervals, not less than annually, to ensure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before returning it to service. The Abortion Facility shall maintain records on each piece of equipment to indicate its history of testing and maintenance.

~~PART VI~~
~~INFECTION CONTROL AND SANITATION~~

~~SECTION 601 General.~~

~~Policies and procedures shall be established in writing to assure safe and aseptic treatment and protection of all patients and personnel against cross-infection.~~

~~SECTION 602 Sterilization Procedures.~~

~~A. Adequate space shall be provided for storage, maintenance and distribution of sterile supplies and equipment.~~

~~B. Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units. They shall be properly labeled.~~

~~C. Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials. The sterilizing equipment shall have approved control and safety features.~~

~~1. There must be documentation of each load run daily. A biological test of the autoclave shall be run daily and the results maintained on a log.~~

~~2. Each separate package of instruments to be sterilized must have internal and external chemical indicators.~~

~~3. The accuracy of instrumentation and equipment shall be provided by periodic calibration and/or preventive maintenance as necessary, but not less than annually, and a log maintained.~~

~~D. The policies and procedures shall indicate how the shelf life of a packaged sterile item is determined. Methods approved for use are:~~

~~1. Date of expiration being marked on the item; or~~

~~2. Event related, i.e., day-to-day expiration, utilizing such wording as, "sterile unless the integrity of the package is compromised."~~

~~SECTION 603 Linen and Laundry.~~

~~A. An adequate supply of clean linen or disposable materials shall be maintained in order to insure change of linen on procedure tables between patients.~~

~~B. Provisions for proper laundering of linen and washable goods shall be made. Soiled and clean linen shall be handled and stored separately. Storage shall be in covered containers.~~

~~C. A sufficient supply of cloth or disposable towels shall be available so that a fresh towel can be used after each handwashing. Towels shall not be shared.~~

~~SECTION 604 Housekeeping.~~

~~A. General. A facility shall be kept neat, clean and free from odors. Accumulated waste material must be removed daily or more often if necessary. There must be frequent cleaning of floors, walls, ceilings, woodwork, and windows. The premises must be kept free from rodent and insect infestation. Bath and toilet facilities must be maintained in a clean and sanitary condition at all times.~~

~~B. Cleaning materials and supplies shall be stored in a safe manner. All harmful agents shall be locked in a closet or cabinet used for this purpose only.~~

~~C. Dry sweeping and dusting of walls and floors are prohibited.~~

~~SECTION 605 Refuse and Waste Disposal.~~

~~A. All garbage and waste shall be collected, stored and disposed of in a manner designed to prevent the transmission of disease. Containers shall be washed and sanitized before being returned to work areas. Disposable type containers shall not be reused.~~

~~B. Containers for garbage and refuse shall be covered and stored outside and placed on an approved platform to prevent overturning by animals, the entrance of flies or the creation of a nuisance. All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect or other vermin problem.~~

~~C. Immediately after emptying, containers for garbage shall be cleaned.~~

~~D. All waste meeting the definition of "infectious waste" as defined in Regulation 61-105 must be managed according to the requirements of that regulation.~~

~~SECTION 606 Outside Areas.~~

~~All outside areas, grounds and/or adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for insects, rodents and other pests. Outside stairs, walkways, ramps and porches shall be maintained free from accumulations of water, ice, snow and other impediments.~~

~~PART VII~~
~~FIRE PROTECTION AND PREVENTION~~
SECTION 1500 – FIRE PROTECTION AND PREVENTION

~~SECTION 701 Fire-fighting Equipment and Systems.~~**1501. Firefighting Equipment and Systems (I)**

A. All ~~facilities~~Abortion Facilities located outside a fire protected area shall have a contract with the nearest fire department.

B. An evacuation plan shall be posted in prominent places and staff members shall be trained as part of their responsibilities to guide patients to the designated exits.

C. All fire protection and alarm systems and other fire-fighting equipment shall be inspected and tested at least once each year, and more often if necessary to maintain them in serviceable condition.

D. Fire extinguishers of the proper type shall be installed in accordance with ~~NFPA 10 (National Fire Protection Association) 10 requirements~~the codes and standards referenced in Section 1602 or as otherwise directed by fire authorities.

1. Fire extinguishers shall be kept in condition for instant use and shall be inspected monthly by ~~facility~~Abortion Facility staff with the date of inspection recorded on a tag affixed to the extinguisher.

2. Fire extinguishers shall be inspected and/or serviced annually by personnel licensed or certified to perform fire extinguisher servicing. Servicing~~/~~ and/or inspection records shall be kept on the fire extinguishers.

E. No portable electric, open flame, or unvented heaters shall be allowed in the ~~facility~~Abortion Facility.

F. Fire Drills.

1. A fire drill shall be conducted at least once every three (3) months. New ~~facilities~~Abortion Facilities shall conduct a fire drill within the first forty-eight (48) hours of operation. Each employee shall participate in a fire drill at least twice each year.

2. Records of drills shall be maintained to report the date, time, description, and evaluation of the drill, to include the names of participating staff and time for total evacuation.

G. Corridor Obstructions. All corridors and other means of egress or exit from the building shall be maintained clear and free of obstructions.

H. Corridor and Stairway Illumination. Corridors, stairs and other means of egress shall be lighted at all times with a minimum of one (1) foot-candle at finish floor level along the path of travel.

~~SECTION 702 Alarms.~~

~~A fire alarm system shall be provided in accordance with the provisions of NFPA 72. The fire alarm system shall be tested monthly and each detector tested annually. Records of all tests shall be retained for at least one year.~~

~~SECTION 703 Gas Storage.~~**1502. Gas Storage (I)**

~~—~~Gases~~,~~ ~~(~~flammable and nonflammable~~),~~ shall be handled and stored in accordance with the provisions of ~~applicable NFPA codes~~the codes and standards referenced in Section 1602.

1503. Fire and Disasters (II)

A. The Department shall be notified immediately via telephone, email, or facsimile regarding any fire in the Abortion Facility, followed by a complete written report, to include fire department reports, if any,

to be submitted within a time period determined by the Abortion Facility, but not to exceed seventy-two (72) hours from the occurrence of the fire.

B. The Abortion Facility shall have an evacuation plan posted in prominent places and staff members shall be trained as part of their responsibilities to guide patients to the designated exits.

C. Where a required fire protection systems is out of service, the Abortion Facility shall notify the fire department and the fire code official immediately, and when required by the fire code official, the building shall either be evacuated or the Abortion Facility shall provide an approved fire watch for all occupants left unprotected by the shutdown until the fire protection system has returned to service, as applicable to the Department's Division of Health Facilities Construction (DHFC) Guidelines Manual.

~~PART VIII~~
~~DESIGN AND CONSTRUCTION~~
SECTION 1600 – DESIGN AND CONSTRUCTION

~~SECTION 801 General.~~**1601. General (II)**

~~—~~Every ~~facility~~Abortion Facility ~~must~~shall be planned, designed, and equipped to provide adequate facilities for the care and comfort of each patient.

~~SECTION 802 Local and State Codes and Standards.~~**1602. Codes and Standards (II)**

~~A. Facilities shall comply with pertinent local and state laws, codes, ordinances and standards with reference to design and construction. Abortion clinics are categorized as a "business occupancy" as defined in the Standard Building Code~~Abortion Facility design and construction shall comply with applicable provisions of these regulations and the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal. No ~~facility~~Abortion Facility ~~will~~shall be licensed unless the Department has assurance that responsible local officials have approved the facility. Requirements of these regulations shall also be met.

~~B. The Department uses as its basic codes: the Standard Building Code, Standard Plumbing Code, Standard Mechanical Code, and National Electrical Code. Buildings designed in accordance with the above-mentioned codes will be acceptable to the Department, provided, however, that the requirements set forth in this regulation are also met.~~

~~SECTION 803 Submission of Plans and Specifications.~~**1603. Submission of Plans and Specifications**

A. New Buildings, Additions or ~~Major~~ Alterations to Existing Buildings. (II)

1. When construction is contemplated either for new buildings, additions, or ~~major~~ alterations to existing buildings, the ~~facility~~Abortion Facility must contact the Division of Health Facilities Construction of this Department to discuss code and regulation requirements that apply to that project. Plans and specifications shall be submitted to the Department for review. ~~Where the Standard Building Code or other regulations require fire-rated walls or other fire-rated structural elements, these~~These plans and specifications shall be prepared by an architect registered in the State of South Carolina and shall bear his~~/~~ or her seal.

2. All plans shall be drawn to scale with the title and date shown thereon. Construction work shall not be started until approval of the final drawings or written permission has been received from the

Department. Any construction changes from the approved documents require approval by the Department.

B. Preliminary submission shall include the following:

1. Plot plan showing size and shape of entire site; orientation and location of proposed building; location and description of any existing structures, adjacent streets, highways, sidewalks, railroads, ~~et cetera~~and other, properly designated; size, characteristics, and location of all existing public utilities, including information concerning water supply available for fire protection;

2. Code analysis and life safety plan; ~~Floor~~floor plans showing overall dimensions of buildings; locations, size, and purpose of all rooms; location and size of doors, windows, and other openings with swing of doors properly indicated; locations of smoke partitions and firewalls; locations of stairs, elevators, dumbwaiters, vertical shafts, and chimneys; and

3. Outline specifications listing a general description of construction including interior finishes and mechanical systems.

C. Final submission shall include the following: Complete working drawings and contract specifications, including layouts for plumbing, air conditioning, ventilation and electrical work and complete fire protection layout, if applicable.

D. ~~In~~If construction is delayed for a period exceeding twelve (12) months from the time of approval of final submission, a new evaluation and/or approval is required.

E. ~~One complete set of as-built drawings shall be filed with DHEC.~~The licensee shall pay the following inspection fees during the construction phase of the project. The plan review is based on the total estimated cost of the project whether new construction, an addition, or a renovation. The fees are detailed in the table below.

Construction Fees	
Plan Review	
Total Project Cost	**Fee**
< $10,001.00	$750
$10,001 - $100,000	$1,500
$100,001 - $500,000	$2,000
> $500,000	$2,500 plus $100 for each additional $100,000 in project cost
Site Review	
50% Inspection	$500
80% Inspection	$500
100% Inspection	$500

~~SECTION 804 Licensure of Existing Structures.~~**1604. Licensure of Existing Structures (II)**

~~—~~When an existing structure is contemplated for licensure it must meet the same building code requirements as a "new" ~~facility~~Abortion Facility (see Section ~~803.A~~1603.A). ~~If an expansion or renovation to an existing facility is contemplated, the~~The ~~facility~~Abortion Facility must contact the Division of Health Facilities Construction of this Department to discuss code and regulatory requirements

that apply to that project. ~~The following shall be submitted to the Department:~~If required, plans shall be submitted in accordance with Section 1603.

~~A. If the physical dimensions of the building are affected, a plot plan in accordance with Section 803.B.1;~~

~~B. A floor plan in accordance with Section 803.B.2;~~

~~C. Description of construction including outside walls, partitions, floor, ceiling and roof. The method of heating and cooling shall also be included.~~

~~NOTE: Those existing abortion clinics that have been identified by the Department, through submission of regular reports of abortions performed, may be licensed in their current buildings. However, upon initial licensure, these facilities will be required to submit a plan that will bring them into full compliance with this chapter within two years from date of licensure.~~

~~SECTION 805 Minor Alterations in Licensed Facilities.~~

~~When alterations that involve construction that may affect walls, ceilings, floors, or fire and life safety are contemplated, preliminary drawings and specifications, accompanied by a narrative completely describing the proposed work, shall be submitted to the Department for review and approval to insure that the proposed alterations comply with current safety and building standards and determine if an architect need be involved.~~

~~SECTION 806 Location.~~

~~A. Transportation. The facility must be served by roads that are passable at all times and are adequate for the volume of expected traffic.~~

~~B. Parking. The facility shall have parking space to reasonably satisfy the needs of patients, staff, and visitors.~~

~~C. Communications. A telephone must be provided on each floor used by patients and additional telephones or extensions must be provided, as required, to summon help in case of fire or other emergency. Pay station telephones are not acceptable for this purpose.~~

~~SECTION 807 Physical Facilities.~~

~~A. An adequate number of examination/procedure rooms shall be provided. A procedure room shall be sized, shaped, and arranged to allow unfettered movement for all persons involved in the procedure.~~

~~B. Each procedure room shall be provided:~~

~~1. A suitable gynecological procedure table;~~

~~2. Equipment necessary to treat patients for hemorrhage, shock, cardiac arrest and other emergencies (an emergency "crash" cart in the immediate vicinity is acceptable); (I)~~

~~C. An area shall be provided for use by nurses in preparing medications for patients and keeping patient medical records. A room or cabinets shall be provided for storing medications and shall be kept locked~~

except when medications are being prepared for administering. Narcotics shall be double-locked. An adequate supply of drugs shall be on hand at all times.

D. An adequate number of recovery room(s) or area(s) shall be provided. There shall be clear space on both sides and at the foot of each recovery bed/recliner to allow unencumbered movement by staff and patients.

1. There shall be a toilet room immediately accessible from the recovery area. This room shall contain a commode with grab bars or recessed hand holds and handwashing lavatory, operable without the use of hands, soap dispenser with soap, and paper towel dispensers with paper towels, or hot air dryer;

2. There shall be a signal system for each patient bath and toilet that shall include an audible alarm that can be heard and location identified by staff;

3. There shall be a readily accessible safe and sanitary storage area for patients' clothing and personal effects;

4. There must be provisions to afford privacy upon request of a patient, e.g., curtains, screens, private room.

E. A room for the temporary storage of soiled linen and waste in covered containers shall be provided. This room shall be provided with at least 10 air changes per hour with all air continuously exhausted to the outside.

F. There must be an area to accommodate the sterilization procedures as described in Section 602. There shall be sufficient surgical instruments sterilized and available for each patient who presents herself for abortion. The area shall be arranged to prevent cross traffic of clean and dirty material. Air flow in this area shall be from the "clean" area toward the "dirty" area.

G. Suitable dressing room space shall be provided for physicians and nursing staff. Scrub facilities shall be provided and located conveniently to the procedure room(s).

H. Procedure and recovery room(s) shall be located on an exit access corridor that provides unimpeded, rapid access to an exit of the building. This exit must accommodate emergency transportation vehicles and equipment.

I. In multi-storied buildings where the facility is not located on the floor of entry to/exit from the building, there must be at least one elevator that serves the clinic floor(s). The elevator must accommodate emergency transportation equipment.

J. Adequate fixed or portable work surface areas shall be maintained for use in each procedure room.

K. Doors providing access into the facility and procedure room(s) shall be at least 36 inches wide to accommodate maneuvering of ambulance stretchers and wheelchairs and other emergency equipment. All corridors shall be at least 48 inches wide.

SECTION 1700 – PHYSICAL PLANT

1701. Physical Facilities

A. The Abortion Facility shall have an adequate number of examination and procedure rooms. A procedure room shall be sized, shaped, and arranged to allow unfettered movement for all persons involved in the procedure.

B. Each procedure room shall have a suitable gynecological procedure table with adjustable examination lighting.

C. The Abortion Facility shall have an area for use by nurses in preparing medications for patients and keeping patient medical records. The Abortion Facility shall have a room or cabinets for storing medications that is kept locked except when medications are being prepared for administration. Narcotics shall be double-locked. An adequate supply of drugs shall be on hand at all times.

D. The Abortion Facility shall have an adequate number of recovery rooms or areas. There shall be clear space on both sides and at the foot of each recovery bed or recliner to allow unencumbered movement by staff and patients. (I)

1. There shall be a toilet room immediately accessible from the recovery area. This room shall contain a commode with grab bars or recessed hand-holds and handwashing lavatory, operable without the use of hands, soap dispenser with soap, and paper towel dispenser with paper towels, or hot air dryer;

2. There shall be a signal system for each patient bath and toilet that shall include an audible alarm that can be heard and location identified by staff;

3. There shall be a readily accessible safe and sanitary storage area for patients' clothing and personal effects; and

4. There shall be provisions to afford privacy upon request of a patient, for example, curtains, screens, or private room. (II)

E. A room for the temporary storage of soiled linen and waste in covered containers shall be provided. (II)

F. There shall be an area to accommodate the sterilization procedures as described in Section 1204. There shall be sufficient surgical instruments sterilized and available for each patient who presents herself for abortion. The area shall be arranged to prevent cross traffic of clean and dirty material. Air flow in this area shall be from the clean area toward the dirty area.

G. The Abortion Facility shall have suitable dressing room space for physicians and nursing staff. The Abortion Facility shall have scrub facilities located conveniently to the procedure room(s).

H. The Abortion Facility shall have procedure and recovery rooms; all located on an exit access corridor with unimpeded, rapid access to an exit of the building. The exit shall accommodate emergency transportation vehicles and equipment.

I. In multi-storied buildings where the Abortion Facility is not located on the floor of entry to or exit from the building, there shall be at least one (1) elevator that serves the Abortion Facility's floor(s). The elevator shall accommodate emergency transportation equipment. (II)

J. Adequate fixed or portable work surface areas shall be maintained for use in each procedure room.

K. Doors providing access into the Abortion Facility and procedure room(s) shall be at least thirty-six (36) inches wide to accommodate maneuvering of ambulance stretchers and wheelchairs and other emergency equipment. All corridors shall be at least forty-eight (48) inches wide.

~~L. Heating and ventilation.~~

~~1. Lighting, heating, and ventilation systems shall comply with local and state codes. There shall be approved equipment capable of maintaining a minimum temperature of 72 degrees Fahrenheit and a maximum temperature of 76 degrees Fahrenheit in patient areas.~~

~~2. The procedure room(s) and the recovery room(s) shall be provided a minimum of six air changes per hour. Air supplied to all areas shall be filtered through filters of at least 25 percent efficiency rating.~~

~~3. Mechanically operated systems shall be used to supply air to and exhaust air from soiled workrooms or soiled storage areas, janitor's closets, toilet rooms, and from spaces that are not provided with operable windows or outside doors.~~

~~M~~L. The entrance shall be at grade level or above, be sheltered from the weather, and accommodate wheelchairs.

~~N~~M. There shall be adequate storage areas for supplies and other storage. Sterile supplies shall be stored separate from other supplies.

~~O~~N. One (1) or more janitor's closets shall be provided throughout the ~~facility~~Abortion Facility as required to maintain a clean and sanitary environment. Each shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies. Cleaning materials and supplies shall be stored in a safe manner. All harmful agents shall be locked in a closet or cabinet for this purpose only.

~~P~~O. A clean work area shall contain space for handwashing and clean storage and may include clean linen storage.

~~Q~~P. There shall be at least two (2) exits remote from each other.

~~R~~Q. Items such as drinking fountains, machines, and portable equipment or any other items shall not be located in the required exit corridors to restrict corridor traffic.

~~S. Thresholds and expansion joint covers shall be made sufficiently flush with the floor surface to accommodate wheeled service carts, wheelchairs, gurneys, etc.~~

~~T. All corridor glazing materials that extend within 18 inches of the floor shall be of safety glass, plastic, wireglass, or other material that will resist breaking and will not create dangerous cutting edges when broken. Safety glass or plastic glazing materials shall be used for any shower doors or bath enclosures.~~

~~U~~R. Cubicle curtains and draperies shall be noncombustible or rendered flame retardant.

~~V~~S. Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant.

~~W~~T. Wall bases in soiled equipment and material workrooms and other areas that are frequently subject to wet cleaning methods shall be tightly sealed and constructed without voids that can harbor insects.

~~X~~U. Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

~~Y~~V. Interior finish materials shall comply with the ~~Standard Building Code~~ requirements ~~for "business occupancy."~~of the codes and standards referenced in Section 1602.

~~Z~~W. Adequate space shall be provided for reception, waiting, interviewing, administrative, and business office functions. Space provided for interviewing and admitting shall be located and designed to provide privacy.

1702. Heating and Ventilation (II)

A. Lighting, heating, and ventilation systems shall comply with the codes and standards referenced in Section 1602. There shall be approved equipment capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit and a maximum temperature of seventy-six (76) degrees Fahrenheit in patient areas.

B. Mechanically operated systems shall be used to supply air to and exhaust air from soiled workrooms or soiled storage areas, janitor's closets, toilet rooms, and from spaces that are not provided with operable windows or outside doors.

~~SECTION 808 Water Supply and Plumbing.~~**1703. Water Supply and Plumbing (II)**

A. Water Supply. Water shall be obtained from a community water system and shall be distributed to conveniently located taps and fixtures throughout the ~~facility~~Abortion Facility and shall be adequate in volume and pressure for all purposes including fire–fighting. Patient and staff handwashing lavatories shall be supplied with hot water that shall be thermostatically controlled to a temperature between one hundred (100) and one hundred twenty-five (125) degrees Fahrenheit.

B. Plumbing.

1. All plumbing material and plumbing systems or parts thereof installed shall meet the minimum requirements of the ~~Standard Plumbing Code~~codes and standards referenced in Section 1602.

2. All plumbing shall be installed in such a manner as to prevent back siphonage or cross-connections between potable and non-potable water supplies. There shall be, at a minimum, an approved double-check assembly on the water supply to the ~~facility~~Abortion Facility.

~~SECTION 809 Emergency Power and Lighting Requirements.~~**1704. Emergency Power and Lighting Requirements**

A. The ~~facility~~Abortion Facility shall be equipped with automatic emergency power adequate to maintain the operation of lighting for procedure rooms, egress, fire detection equipment, and alarms. (I)

B. There shall be sufficient safe lighting for all activities, including suitable lighting for corridors. (II)

C. Battery backup with a duration of ninety (90) minutes is acceptable for the requirements listed in Sections 1704.A and 1704.B. (II)

1705. Location

A. Transportation. The Abortion Facility shall be served by roads that are passable at all times and adequate for the volume of expected traffic.

B. Parking. The Abortion Facility shall have parking space to reasonably satisfy the needs of patients, staff, and visitors.

C. Communications. The Abortion Facility shall have a telephone on each floor for patients and additional telephones or extensions, as required, to summon help in case of fire or other emergency. Pay station telephones are not acceptable for this purpose. (II)

~~Part IX. PREREQUISITES FOR INITIAL LICENSURE.~~

~~Prior to admission of patients to, and issuance of a license for new facilities or additional procedure rooms, the following actions must be accomplished:~~

~~A. Plans and construction must be approved by the Division of Health Facilities Construction of this Department.~~

~~B. The facility shall submit a completed application for license on forms that shall be furnished by the Division of Health Licensing. The following documents shall be submitted with the application:~~

~~1. Final construction approval of both water and wastewater systems by the appropriate District Environmental Quality Control Office of this Department (includes satisfactory laboratory reports of water samples).~~

~~2. Approval from the appropriate building official stating that all applicable local codes and ordinances have been complied with.~~

~~a. If the facility is located within town or city limits, approval by the local fire chief stating that all applicable requirements have been met, or~~

~~b. If the facility is located outside town or city limits, a written letter of agreement with the nearest fire department that will provide protection and respond in case of fire at the facility shall be obtained. This letter shall indicate that they have the equipment, personnel, and/or agreements with other departments to adequately respond to this type of facility.~~

~~3. Certification and laboratory test reports, provided by the manufacturer or supplier, that all carpeting purchased by the facility meets the requirements of the Standard Building Code.~~

~~4. Certification by the contractor that only the carpeting described in B.3 above was installed in the facility.~~

~~5. Certification by the manufacturer or supplier that all drapes and cubicle curtains purchased by the facility are flame or fire resistant or retardant.~~

~~6. Certification by the owner or contractor that only materials described in B.5 above were installed.~~

~~7. Certification by the manufacturer or supplier that all wall covering materials purchased by the facility are fire or flame resistant or retardant.~~

~~8. Certification by the contractor that only the materials described in 7 above were installed.~~

~~9. Certification by the engineer that all fire alarm and smoke detection systems have been installed according to plans and specifications, have been tested and operate satisfactorily.~~

~~10. Certification by the contractor that the automatic sprinkler system, if required or installed, has been completed and tested in accordance with the approved plans and specifications and NFPA No. 13. Include a copy of the approval letter of the sprinkler shop drawings.~~

~~11. Certification that all medical gas systems have been properly installed and tested.~~

~~C. The facility must register as an infectious waste generator as outlined in Regulation 61-105.~~

~~D. Required personnel must be employed, available, trained, and capable of performing their duties.~~

~~E. The Division of Health Licensing shall inspect the facility and require compliance with these regulations.~~

~~F. The facility must pay the required licensing fee.~~

SECTION 1800 – SEVERABILITY

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

~~PART X GENERAL.~~

SECTION 1900 - GENERAL

~~—~~Conditions ~~arising~~ that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

ATTACHMENT D
SUMMARY OF DRAFTING COMMENTS AND DEPARTMENT RESPONSES
REGULATION 61-12, STANDARDS FOR LICENSING ABORTION CLINICS

September 8, 2016

Commenters:
Charleston Women's Medical Center (CWMC)

NAME	SECTION	DRAFTING COMMENT	DEPARTMENT RESPONSE
CWMC	General (1)	Require DHEC to verify how many SCITOP reports were received by each clinic weekly as opposed to DHEC reviewing months later then stating they are missing reports.	Not adopted. Induced Termination of Pregnancy (ITOP) reports are handled by Vital Statistics and do not fall under this regulation.

NAME	SECTION	DRAFTING COMMENT	DEPARTMENT RESPONSE
CWMC	Former 309.D.1 (2)	Remove the requirement for a white blood cell count for patients beyond 14 weeks. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Adopted. The requirement of a white blood cell count for patients beyond fourteen (14) weeks has been removed.
CWMC	505.A (3)	Remove the provision that an RN needs to be on the premises. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Not adopted. The requirement of a registered nurse (RN) on the premises is necessary to assist physicians during procedures, as well as care for patients during and after procedures. This requirements is necessary to maintain an acceptable level of care for patients.
CWMC	703.B.1 (4)	Do not require father to be listed on minor face sheet. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Adopted. The requirements for the father to be listed on the minor's face sheet has been removed.
CWMC	804.C (5)	Remove the requirement that a pregnancy test be done as long as an ultrasound confirms a pregnancy. Cardiac activity/fetal heartbeat cannot be detected by physical exam. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Adopted. The requirement for a pregnancy test has been removed.
CWMC	804.C (6)	Remove the requirement for a urinalysis for albumin and glucose. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Adopted. The requirement for a urinalysis for albumin and glucose has been removed.
CWMC	804.D.1 (7)	Remove the requirement to offer testing for chlamydia/gonorrhea. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Not adopted. Testing for chlamydia and gonorrhea is vital to the health of the patient and may reduce the risk of post-procedure complications, such as Pelvic Inflammatory Disease.
CWMC	1208.B (8)	With regard to infectious waste, change the form so that the waste isn't divided. These standards are not applicable to physicians practicing other specialties though it seems unnecessary for you to target abortion providers if you are worried about the health of the patients.	Clarified. Accumulated waste is regulated by Regulation 61-105, Infectious Waste Management.

ATTACHMENT E
DRAFT STATE REGISTER NOTICE OF PROPOSED REGULATION OF REGULATION 61-12, STANDARDS FOR LICENSING ABORTION CLINICS

September 8, 2016

Document No. ____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Chapter 61
Statutory Authority: 1976 Code Sections 44-41-10, et seq, and 44-7-110, et seq.

R.61-12, *Standards for Licensing Abortion Clinics*.

Preamble:

Regulation 61-12 has not been substantively updated since 1996. This amendment is necessary to update definitions, references, and codification. The amendment may also revise requirements for obtaining licensure, compliance for licensure, accident and incident reporting requirements, abortion reporting, inspections and violations, complaint reporting, patient rights, infection control, inservice training, record maintenance and retention, personnel requirements, fire and life safety requirements, and construction design requirements. The Department also intends to add language to incorporating current provider-wide

exceptions and memoranda applicable to abortion clinics. The Department may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, codification, and overall improvement of the text of the regulation.

A Notice of Drafting was published in the *State Register* on April 22, 2016.

Section-by-Section Discussion of Proposed Amendments

The text of the Summary of Proposed Revisions is submitted as Attachment B and is omitted here to conserve space in the Board Agenda Item.

Notice of Public Hearing and Opportunity for Public Comments:

Interested persons may submit written comments on the proposed regulation by writing to Gwen C. Thompson by mail at Bureau of Health Facilities Licensing, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201; by facsimile at (803) 545-4212; or by email at HealthRegComm@dhec.sc.gov. Comments may also be submitted electronically on the Public Comments for Health Regulations page at the following address: http://www.scdhec.gov/Agency/RegulationsAndUpdates/PublicComments/. To be considered, comments must be received no later than 5:00 p.m. on October 24, 2016, the close of the public comment period. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the Board of Health and Environmental Control's consideration at the public hearing.

Interested persons may also make oral and/or written comments on the proposed amendments of R.61-12 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on December 8, 2016. The Board will conduct the public hearing in the Board Room, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, South Carolina 29201. The Board meeting commences at 10:00 a.m., at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda published by the Department twenty-four (24) hours in advance of the meeting at the following address: http://www.scdhec.gov/Agency/docs/AGENDA.pdf. Persons desiring to make oral comments at the hearing are asked to limit their statements to five (5) minutes and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street entrance and register at the front desk.

Copies of the proposed amendments for public comment as published in the State Register on September 23, 2016, may be obtained online in the DHEC Regulation Development Update at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/. Click on the Health Facilities Regulations topic and scan down to the proposed amendments of R.61-12. A copy can also be obtained by contacting Gwen Thompson at the above address or by email at thompsgw@dhec.sc.gov.

Preliminary Fiscal Impact Statement:

Implementation of this regulation will not require additional resources. There is no anticipated additional cost by the Department or state government due to any inherent requirements of this regulation. There are no external costs anticipated.

Statement of Need and Reasonableness and Rationale:

The Statement of Need and Reasonableness and Rationale is submitted as Attachment A and is omitted here to conserve space in the Board Agenda Item.

Text:

The text of the proposed amendments is submitted as Attachment C and is omitted here to conserve space in the Board Agenda Item.

ATTACHMENT F
STATE REGISTER NOTICE OF DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-41-10, *et seq*, and 44-7-110, *et seq*.

Notice of Drafting:

The Department of Health and Environmental Control proposes amending Regulation 61-12, *Standards for Licensing Abortion Clinics*. This Notice of Drafting supersedes and replaces the Notice of Drafting published in the *State Register* on May 22, 2015. Interested persons may submit written comments to Gwen C. Thompson, Bureau Chief, Bureau of Health Facilities Licensing, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201 or via email at HealthRegComm@dhec.sc.gov. Comments may also be submitted electronically at the following address: http://www.scdhec.gov/Agency/RegulationsAndUpdates/PublicComments/, under the Notice of Drafting for R.61-12. To be considered, all comments must be received no later than 5:00 p.m. May 23, 2016, the close of the comment period.

Synopsis:

Regulation 61-12 has not been substantively updated since 1996. This amendment is necessary to update definitions, references, and codification. The amendment may also revise requirements for obtaining licensure, compliance for licensure, accident and incident reporting requirements, abortion reporting, inspections and violations, complaint reporting, patient rights, infection control, inservice training, record maintenance and retention, personnel requirements, fire and life safety requirements, and construction design requirements. The Department also intends to add language to incorporating current provider-wide exceptions and memoranda applicable to abortion clinics. The Department may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, codification, and overall improvement of the text of the regulation.

Legislative review will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

SUMMARY SHEET

September 8, 2016

(x) ACTION/DECISION
( ) INFORMATION

I. TITLE: Proposed Amendment of Regulation 61-68, *Water Classifications and Standards* Legislative Review Required

II. SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment

III. FACTS:

1. Regulation 61-68 was promulgated pursuant to S.C. Code Section 48-1-10 et seq. R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. In accordance with Section 303(c)(2)(B) of the Federal Clean Water Act ("CWA"), the Department reviews, and amend at its discretion, this regulation once every three years in order to incorporate desirable most recently published Federal criterion recommendations and guidance. Hence, this review process is often referred to as the "triennial review."

2. A Notice of Drafting was published in the State Register on February 26, 2016, initiating the regulation development process. The Department emailed the details to interested parties, as well as placed the notice on the Department's website encouraging submittals for the formal comment period and providing contact information. The interested parties included, but were not limited to, representatives of environmental associations; trade, industrial, agricultural, and forestry organizations; public health, scientific, and professional groups; other Federal, State and local government agencies, and members of the general public. A copy of this Notice is submitted as Attachment F.

3. On June 22, 2016, the Department met with stakeholders to discuss the Notice of Drafting and to receive stakeholder input regarding the issues. The Department presented the proposed adoption of human health water quality criteria from EPA. General discussion continued and stakeholders were encouraged to provide written comments regarding the Department proposals.

4. The Department proposes that the amendment of R.61-68 will strengthen and improve the existing regulation and make appropriate revisions of the State's water quality standards in accordance with Section 303(c)(2)(B) of the CWA. The issues specifically addressed in the proposed revisions are:

Issue 1: Adoption of federal ambient water quality criteria for the protection of human health for ninety-four chemical pollutants;

Issue 2: Adoption of federal aquatic life water quality criteria for cadmium.

5. A Table of Revisions and the Text of the Proposed Amendment are submitted as Attachments B and C.

6. The proposed amendment was internally reviewed by appropriate Department staff for compatibility with other regulations.

7. A Summary of Public Comments and Department Responses is submitted as Attachment E.

8. Department staff is requesting initial approval to public notice the proposed regulation. If approval is granted, a Notice of Proposed Regulation will be published in the State Register on September 23, 2016; a proposed Staff Information Forum will be held on October 24, 2016; and a public hearing before the DHEC Board will be scheduled for December 8, 2016. A draft State Register Notice of Proposed Regulation is submitted as Attachment D.

IV. ANALYSIS: The Department proposes these amendments in accordance with 33 U.S.C. Section 303(c)(2)(B) of the CWA. The proposed changes to the regulation include the following:

- The proposed changes to R.61-68 relating to the adoption of the ambient water quality criteria for the protection of human health for ninety-four chemical pollutants as published by EPA are based on sound scientific principles and are required in order to comply with the goals of 33 U.S.C. Sections 101(a)(2) and 303(c) of the Clean Water Act for protection and maintenance of the uses of the waters of the State. Adoption of this standard will use the most up-to-date science for these standards.

- The proposed changes to R.61-68 relating to the adoption of the aquatic life water quality criteria for cadmium as published by EPA are based on sound scientific principles and are required in order to comply with the goals of 33 U.S.C. Sections 101(a)(2) and 303(c) of the Clean Water Act for protection and maintenance of the uses of the waters of the State. Adoption of this standard will use the most up-to-date science for these standards.

A Statement of Need and Reasonableness and a Statement of Rationale is submitted as Attachment A.

V. RECOMMENDATION: Department staff recommends that the Board grant approval to publish a Notice of Proposed Regulation in the State Register, hold a Staff Informational Forum on October 24, 2016, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted by:

David Baize
Chief, Bureau of Water

Submitted by:

Myra C. Reece
Director of Environmental Affairs

Attachments:

A. Statement of Need and Reasonableness and Statement of Rationale
B. Table of Revisions
C. Text of Proposed Amendment of R.61-68
D. Draft of State Register Notice of Proposed Regulation
E. Summary of Public Comments and Department Responses
F. State Register Notice of Drafting published on February 26, 2016

ATTACHMENT A
STATEMENT OF NEED AND REASONABLENESS
STATEMENT OF RATIONALE
PROPOSED AMENDMENT OF R.61-68, WATER CLASSIFICATIONS AND STANDARDS
September 8, 2016

Statement of Need and Reasonableness:

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11) (2005):

DESCRIPTION OF REGULATIONS: Amendment of Regulation 61-68, *Water Classifications and Standards*.

Purpose: Proposed amendment of R.61-68 will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State's water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the Federal Clean Water Act ("CWA").

Legal Authority: 1976 Code Sections 48-1-10 et seq.

Plan for Implementation: The proposed amendments would be incorporated within R.61-68 upon approval of the General Assembly and publication in the State Register. The proposed amendments will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

The Department proposes these amendments in accordance with 33 U.S.C. Section 303(c)(2)(B) of the CWA. The proposed amendments to R.61-68 include the following:

- Modification and adoption of federal ambient water quality criteria for the protection of human health for ninety-four chemical pollutants to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA. This modification amends R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health Priority Toxic Pollutants and Non Priority Pollutants.

- Modification and adoption of federal aquatic life water quality criteria for cadmium to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA. This modification amends R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health Priority Toxic Pollutants.

The proposed changes to R.61-68 relating to human health criteria and cadmium criteria are reasonable because the stated criteria in the amendments are based on sound scientific principles and comply with the goals of 33 U.S.C. Sections 101(a)(2) and 303(c) of the CWA for protection and maintenance of the uses of the waters of the State. These changes reflect the EPA's most recent criteria.

DETERMINATION OF COSTS AND BENEFITS: Existing staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

In reviewing the potential for significant economic impact of the proposed amendment to R.61-68, the Department specifically evaluated situations in which costs would most likely be incurred by the regulated community. These estimates addressed the specific revisions by issue after determining those of greatest potential impact. The Department found that the overall impact to the State's political subdivisions or the regulated community as a whole was not likely to be significant in that the existing standards would have incurred similar cost or the fact that the standards required under the amendment will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES: Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizenry of the State. The amendments to R.61-68 seek to promote and protect aquatic life and human health by the regulation of pollutants into waters of the State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Failure by the Department to incorporate appropriately protective water quality standards in R.61-68 that are the basis for issuance of National Pollutant Discharge Elimination System ("NPDES") permits, stormwater permits, wasteload and load allocations, groundwater remediation plans, and multiple other program areas will lead to contamination of the waters of the State with detrimental effects on the health of flora and fauna in the State as well as the citizens of South Carolina.

Statement of Rationale:

The Department proposes to amend R.61-68 to strengthen and improve the existing regulation and make appropriate revisions of the State's water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the Federal Clean Water Act ("CWA"). In accordance with Section 303(c)(2)(B) of the CWA, the Department reviews, and amends at its discretion, this regulation once every three years in order to incorporate desirable most recently published Federal criterion recommendations and guidance. Hence, this review process is often referred to as the "triennial review." The Department proposes to adopt a revised standard for ambient water quality criteria for the protection of human health for ninety-four chemical pollutants, and a revised standard for aquatic life water quality criteria for cadmium to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

ATTACHMENT B
TABLE OF REVISIONS
PROPOSED AMENDMENT OF R.61-68, WATER CLASSIFICATIONS AND STANDARDS
September 8, 2016

Note: The sections cited in this listing reflect the sections as they are numbered in the overstrike/underline version of Attachment C in the Board agenda item and are listed by issue. We do not specify any revised numbering after the addition or deletion of text, but will note those changes in the text in Attachment C of the Board agenda item. Each regulation is listed separately below.

Section Citation and Explanation of Change

(1) Revision of Federal toxics criteria to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health Priority Toxic Pollutants and Non Priority Pollutants - The proposed revised language is added to reflect the EPA's most recent recommendations and guidance concerning ambient water quality criteria for the protection of human health for ninety-four chemical pollutants and concerning aquatic life water quality criteria for cadmium.

ATTACHMENT C
TEXT OF PROPOSED AMENDMENT OF
R.61-68, WATER CLASSIFICATIONS AND STANDARDS
September 8, 2016

Text of Proposed Amendment for Public Notice and Comment

~~Indicates Matter Stricken~~
Indicates New Matter

R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health

Amend Priority Toxic Pollutants in its entirety to read:

APPENDIX: WATER QUALITY NUMERIC CRITERIA FOR THE PROTECTION OF AQUATIC LIFE AND HUMAN HEALTH

This appendix contains three charts (priority pollutants, nonpriority pollutants, and organoleptic effects) of numeric criteria for the protection of human health and aquatic life. The appendix also contains three attachments which address hardness conversions and application of ammonia criteria. Footnotes specific to each chart follow the chart. General footnotes pertaining to all are at the end of the charts prior to the attachments. The numeric criteria developed and published by EPA are hereby incorporated into this regulation. Please refer to the text of the regulation for other general information and specifications in applying these numeric criteria.

PRIORITY TOXIC POLLUTANTS

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
1	Antimony	7440360					5.6 B, ee	640 B, ee	6 ee	65FR66443 SDWA
2	Arsenic	7440382	340 A, D, K	150 A, D, K	69 A, D, Y	36 A, D, Y	10 C	10 C	10 C	65FR31682 57FR60848 SDWA
3	Beryllium	7440417					J, ee	J, ee	4 ee	65FR31682 SDWA
4	Cadmium	7440439	~~0.53~~ 0.49 D, E, ~~K~~ Y	~~0.10~~ 0.25 D, E, ~~K~~ Y	~~43~~ 33 D, Y	~~9.3~~ 7.9 D, Y	J, ee	J, ee	5 ee	~~65FR31682~~ 81FR19176 SDWA
5a	Chromium III	16065831	580 D, E, K	28 D, E, K			J, ee	J, ee	100 Total ee	EPA820/B-96-001 65FR31682 SDWA
5b	Chromium VI	18540299	16 D, K	11 D, K	1,100 D, Y	50 D, Y	J, ee	J, ee	100 Total ee	65FR31682 SDWA
6	Copper	7440508	3.8 D, E, K, Z, ll	2.9 D, E, K, Z, ll	5.8 D, Z, Y, cc	3.7 D, Z, Y, cc	1,300 T, ee			65FR31682

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
7	Lead	7439921	14 D, E, Y	0.54 D, E, Y	220 D, Y	8.5 D, Y				65FR31682
8	Mercury	7439976	1.6 D, K, dd	0.91 D, K, dd	2.1 D, bb, dd	1.1 D, bb, dd	0.050 B, ee	0.051 B, ee	2 ee	65FR31682 SDWA
9	Nickel	7440020	150 D, E, K	16 D, E, K	75 D, Y	8.3 D, Y	610 B, ee	4, 600 B, ee		65FR31682
10	Selenium	7782492	L, Q, S	5.0 S	290 D, aa	71 D, aa	170 Z, ee	4,200 ee	50 ee	65FR31682 65FR66443 SDWA
11	Silver	7440224	0.37 D, E, G		2.3 D, G					65FR31682
12	Thallium	7440280					0.24	0.47	2 ee	68FR75510 SDWA
13	Zinc	7440666	37 D, E, K	37 D, E, K	95 D, Y	86 D, Y	7,400 T, ee	26,000 T, ee		65FR31682 65FR66443
14	Cyanide	57125	22 K, P	5.2 K, P	1 P, Y	1 P, Y	~~140~~ 4 ee, jj	~~140~~ 400 ee, jj	200 ee	EPA820/B-96-001 57FR60848 ~~68FR75510~~ 80FR36986 SDWA
15	Asbestos	1332214							7 million fibers/L I, ee	57FR60848
16	2, 3, 7, 8-TCDD (Dioxin)	1746016						0.046 ppq O, C	30ppq O, C	State Standard SDWA
17	Acrolein	107028	3	3			~~6~~ 3 ee, nn	~~9~~ 400 ee, nn		~~74FR27535~~ 80FR36986 74FR46587
18	Acrylonitrile	107131					~~0.051~~ 0.061 B, C	~~0.25~~ 7.0 B, C		~~65FR66443~~ 80FR36986

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
19	Benzene	71432					~~2.2~~ 0.58 B, C, hh	~~51~~ 16 B, C, hh	5 C	IRIS 01/19/00 ~~65FR66443~~ 80FR36986 SDWA
20	Bromate	15541454							10 C	SDWA
21	Bromoform	75252					~~4.3~~ 7.0 B, C	~~140~~ 120 B, C	80 Total THMs C	~~65FR66443~~ 80FR36986 SDWA
22	Bromoacetic acid	79083							60 Total HAA5 C,mm	SDWA
23	Carbon Tetrachloride	56235					~~0.23~~ 0.4 B, C	~~1.6~~ 5 B, C	5 C	65FR66443 SDWA
24	Chlorite	67481							100	SDWA
25	Chlorobenzene	108907					~~130~~ 100 T, ee	~~1,600~~ 800 T, ee	100 T, ee	~~68FR75510~~ 80FR36986 SDWA
26	Chlorodibromomethane	124481					~~0.40~~ 0.80 B, C	~~13~~ 21 B, C	80 Total THMs C	~~65FR66443~~ 80FR36986 SDWA
27	Chloroform	67663					~~5.7~~ 60 B, C~~, hh~~	~~470~~ 2,000 B, C~~, hh~~	80 Total THMs C	~~62FR42160~~ 80FR36986 SDWA
28	Dibromoacetic acid	631641							60 Total HAA5 C, mm	SDWA
29	Dichloroacetic acid	79436							60 Total HAA5 C,mm	SDWA
30	Dichlorobromomethane	75274					~~0.55~~ 0.95 B, C	~~17~~ 27 B, C	80 Total THMs C	~~65FR66443~~ 80FR36986 SDWA

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
31	1, 2-Dichloroethane	107062					~~0.38~~ 9.9 B, C	~~37~~ 650 B, C	5 C	~~65FR66443~~ 80FR36986 SDWA
32	1, 1-Dichloroethylene	75354					~~330~~ 300 ee	~~7,100~~ 20,000 ee	7 C	~~68FR75510~~ 80FR36986 SDWA
33	1, 2-Dichloropropane	78875					~~0.50~~ 0.90 B, C	~~15~~ 31 B, C	5 C	~~65FR66443~~ 80FR36986 SDWA
34	1, 3-Dichloropropene	542756					~~0.34~~ 0.27 ee	~~21~~ 12 ee		~~68FR75510~~ 80FR36986
35	Ethylbenzene	100414					~~530~~ 68 ee	~~2,100~~ 130 ee	700 ee	~~68FR75510~~ 80FR36986 SDWA
36	Methyl Bromide	74839					~~47~~ 100 B, ee	~~1,500~~ 10,000 B, ee		~~65FR66443~~ 80FR36986
37	Methylene Chloride	75092					~~4.6~~ 20 B, C	~~590~~ 1,000 B, C	5 C	~~65FR66443~~ 80FR36986 SDWA
38	Monochloroacetic acid	79118							60 Total HAA5 C,mm	SDWA
39	1, 1, 2, 2-Tetrachloroethane	79345					~~0.17~~ 0.20 B, C	~~4.0~~ 3.0 B, C		~~65FR66443~~ 80FR36986
40	Tetrachloroethylene	127184					~~0.69~~ 10 C	~~3.3~~ 29 C	5 C	~~65FR66443~~ 80FR36986 SDWA
41	Toluene	108883					~~1,300~~ 57 ee	~~15,000~~ 520 ee	1,000 ee	~~68FR75510~~ 80FR36986 SDWA
42	1,2-Trans-Dichloroethylene	156605					~~140~~ 100 ee	~~10,000~~ 4,000 ee	100 ee	~~68FR75510~~ 80FR36986 SDWA

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
43	Trichloroacetic acid	79039							60 Total HAA5 C,mm	SDWA
44	1, 1, 1-Trichloroethane	71556					10,000 ~~J~~, ee	200,000 ~~J~~, ee	200 ee	~~65FR31682~~ 80FR36986 SDWA
45	1, 1, 2-Trichloroethane	79005					~~0.59~~ 0.55 B, C	~~16~~ 8.9 B, C	5 C	~~65FR66443~~ 80FR36986 SDWA
46	Trichloroethylene	79016					~~2.5~~ 0.6 C	~~30~~ 7 C	5 C	~~65FR66443~~ 80FR36986 SDWA
47	Vinyl Chloride	75014					~~0.025~~ 0.022 kk	~~2.4~~ 1.6 kk	2 C	~~68FR75510~~ 80FR36986 SDWA
48	2-Chlorophenol	95578					~~81~~ 30 B, T, ee	~~150~~ 800 B, T, ee		~~65FR66443~~ 80FR36986
49	2, 4-Dichlorophenol	120832					~~77~~ 10 B, T, ee	~~290~~ 60 B, T, ee		~~65FR66443~~ 80FR36986
50	2, 4-Dimethylphenol	105679					~~380~~ 100 B, T, ee	~~850~~ 3,000 B, T, ee		~~65FR66443~~ 80FR36986
51	2-Methyl- 4, 6-Dinitrophenol	534521					~~13~~ 2 ee	~~280~~ 30 ee		~~65FR66443~~ 80FR36986
52	2, 4-Dinitrophenol	51285					~~69~~ 10 B, ee	~~5,300~~ 300 B, ee		~~65FR66443~~ 80FR36986
53	Pentachlorophenol	87865	19 F, K	15 F, K	13 Y	7.9 Y	~~0.27~~ 0.03 B, C	~~3.0~~ 0.04 B, C, H	1 C	65FR31682 ~~65FR66443~~ 80FR36986 SDWA
54	Phenol	108952					~~10,000~~ 4,000 T, ee, nn	~~860,000~~ 300,000 T, ee, nn		~~74FR27535~~ ~~74FR46587~~ 80FR36986

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
55	2, 4, 6-Trichlorophenol	88062					~~1.4~~ 1.5 B, C, ~~T~~	~~2.4~~ 2.8 B, C, T		~~65FR66443~~ 80FR36986
56	Acenaphthene	83329					~~670~~ 70 B, T, ee	~~990~~ 90 B, T, ee		~~65FR66443~~ 80FR36986
57	Anthracene	120127					~~8,300~~ 300 B, ee	~~40,000~~ 400 B, ee		~~65FR66443~~ 80FR36986
58	Benzidine	92875					~~0.000086~~ 0.00014 B, C	~~0.00020~~ 0.011 B, C		~~65FR66443~~ 80FR36986
59	Benzo (a) Anthracene	56553					~~0.0038~~ 0.0012 B, C	~~0.018~~ 0.0013 B, C		~~65FR66443~~ 80FR36986
60	Benzo (a) Pyrene	50328					~~0.0038~~ 0.00012 B, C	~~0.018~~ 0.00013 B, C	0.2 C	~~65FR66443~~ 80FR36986 SDWA
61	Benzo (b) Fluoranthene	205992					~~0.0038~~ 0.0012 B, C	~~0.018~~ 0.0013 B, C		~~65FR66443~~ 80FR36986
62	Benzo (k) Fluoranthene	207089					~~0.0038~~ 0.012 B, C	~~0.018~~ 0.013 B, C		~~65FR66443~~ 80FR36986
63	Bis-2-Chloroethyl Ether	111444					0.030 B, C	~~0.53~~ 2.2 B, C		~~65FR66443~~ 80FR36986
64	~~Bis-2-Chloroisopropyl Ether~~ Bis(2-Chloro-1-Methylethyl) Ether	108601					~~1,400~~ 200 B, ee	~~65,000~~ 4,000 B, ee		~~65FR66443~~ 80FR36986
65	~~Bi-s2-Ethylhexyl Phthalate (DEHP)~~ Bis-2-Ethylhexyl Phthalate (DEHP)	117817	V	V	V	V	~~1.2~~ 0.32 B, C	~~2.2~~ 0.37 B, C	6 C	~~65FR66443~~ 80FR36986 SDWA

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
66	Butylbenzene Phthalate	85687	ii	ii	ii	ii	~~1,500~~ 0.10 B, ee	~~1,900~~ 0.10 B, ee		~~65FR66443~~ 80FR36986
67	2-Chloronaphthalene	91587					~~1,000~~ 800 B, ee	~~1,600~~ 1,000 B, ee		~~65FR66443~~ 80FR36986
68	Chrysene	218019					~~0.0038~~ 0.12 B, C	~~0.018~~ 0.13 B, C		~~65FR66443~~ 80FR36986
69	Dibenzo(a,h)Anthracene	53703					~~0.0038~~ 0.00012 B, C	~~0.018~~ 0.00013 B, C		~~65FR66443~~ 80FR36986
70	1, 2-Dichlorobenzene	95501					~~420~~ 1,000 ee	~~1,300~~ 3,000 ee	600 ee	~~68FR75510~~ 80FR36986 SDWA
71	1, 3-Dichlorobenzene	541731					~~320~~ 7 ee	~~960~~ 10 ee		~~65FR66443~~ 80FR36986
72	1, 4-Dichlorobenzene	106467					~~63~~ 300 ee	~~190~~ 900 ee	75 ee	~~68FR75510~~ 80FR36986 SDWA
73	3, 3'-Dichlorobenzidine	91941					~~0.021~~ 0.049 B, C	~~0.028~~ 0.15 B, C		~~65FR66443~~ 80FR36986
74	Diethyl Phthalate	84662	ii	ii	ii	ii	~~17,000~~ 600 B, ee	~~44,000~~ 600 B, ee		~~65FR66443~~ 80FR36986
75	Dimethyl Phthalate	~~13113~~ 131113	ii	ii	ii	ii	~~270,000~~ 2,000 B, ee	~~1,100,000~~ 2,000 B, ee		~~65FR66443~~ 80FR36986
76	Di-n-butyl Phthalate	84742	ii	ii	ii	ii	~~2,000~~ 20 B, ee	~~4,500~~ 30 B, ee		~~65FR66443~~ 80FR36986
77	2, 4-Dinitrotoluene	121142					~~0.11~~ 0.049 C	~~3.4~~ 1.7 C		~~65FR66443~~ 80FR36986

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
78	1, 2-Diphenylhydrazine	122667					~~0.036~~ 0.03 B, C	0.20 B, C		65FR66443 80FR36986
79	Fluoranthene	206440					~~130~~ 20 B, ee	~~140~~ 20 B, ee		~~65FR66443~~ 80FR36986
80	Fluorene	86737					~~1,100~~ 50 B, ee	~~5,300~~ 70 B, ee		~~65FR66443~~ 80FR36986
81	Hexachlorobenzene	118741					~~0.00028~~ 0.000079 B, C	~~0.00029~~ 0.000079 B, C	1 C	~~65FR66443~~ 80FR36986 SDWA
82	Hexachlorobutadiene	87683					~~0.44~~ 0.01 B, C	~~18~~ 0.01 B, C		~~65FR66443~~ 80FR36986
83	Hexachlorocyclo-pentadiene	77474					~~40~~ 4 T, ee	~~1100~~ 4 T, ee	50 ee	~~68FR75510~~ 80FR36986 SDWA
84	Hexachloroethane	67721					~~1.4~~ 0.1 B, C	~~3.3~~ 0.1 B, C		~~65FR66443~~ 80FR36986
85	Indeno 1,2,3(cd) Pyrene	193395					~~0.0038~~ 0.0012 B, C	~~0.018~~ 0.0013 B, C		~~65FR66443~~ 80FR36986
86	Isophorone	78591					~~35~~ 34 B, C	~~960~~ 1,800 B, C		~~65FR66443~~ 80FR36986
87	Nitrobenzene	98953					~~17~~ 10 B, ee	~~690~~ 600 B, H, T, ee		~~65FR66443~~ 80FR36986
88	N-Nitrosodimethylamine	62759					0.00069 B, C	3.0 B, C		65FR66443

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
89	N-Nitrosodi-n-Propylamine	621647					0.0050 B, C	0.51 B, C		65FR66443
90	N-Nitrosodiphenylamine	86306					3.3 B, C	6.0 B, C		65FR66443
91	Pyrene	129000					~~830~~ 20 B, ee	~~4,000~~ 30 B, ee		~~65FR66443~~ 80FR36986
92	1, 2, 4-Trichlorobenzene	120821					~~35~~ 0.071 ee	~~70~~ 0.076 ee	70 ee	~~68FR75510~~ 80FR36986 SDWA
93	Aldrin	309002	3.0 G, X		1.3 G, X		~~0.000049~~ 0.00000077 B, C	~~0.000050~~ 0.00000077 B, C		65FR31682 ~~65FR66443~~ 80FR36986
94	alpha-BHC	319846					~~0.0026~~ 0.00036 B, C	~~0.0049~~ 0.00039 B, C		~~65FR66443~~ 80FR36986
95	beta-BHC	319857					~~0.0091~~ 0.0080 B, C	~~0.017~~ 0.014 B, C		~~65FR66443~~ 80FR36986
96	gamma-BHC (Lindane)	58899	0.95 K		0.16 G		~~0.98~~ 4.2 ee	~~1.8~~ 4.4 ee	0.2 C	65FR31682 ~~68FR75510~~ 80FR36986 SDWA
97	Chlordane	57749	2.4 G	0.0043 G, X	0.09 G	0.004 G, X	~~0.00080~~ 0.00031 B, C	~~0.00081~~ 0.00032 B, C	2 C	65FR31682 ~~65FR66443~~ 80FR36986 SDWA
98	4, 4'-DDT	50293	1.1 G, gg	0.001 G, X, gg	0.13 G, gg	0.001 G, X, gg	~~0.00022~~ 0.000030 B, C	~~0.00022~~ 0.000030 B, C		65FR31682 ~~65FR66443~~ 80FR36986
99	4, 4'-DDE	72559					~~0.00022~~ 0.000018 B, C	~~0.00022~~ 0.000018 B, C		~~65FR66443~~ 80FR36986

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
100	4, 4'-DDD	72548					~~0.00031~~ 0.00012 B, C	~~0.00031~~ 0.00012 B, C		~~65FR66443~~ 80FR36986
101	Dieldrin	60571	0.24 K	0.056 K, N	0.71 G	0.0019 G, X	~~0.000052~~ 0.0000012 B, C	~~0.000054~~ 0.0000012 B, C		65FR31682 ~~65FR66443~~ 80FR36986
102	alpha-Endosulfan	959988	0.22 G, W	0.056 G, W	0.034 G, W	0.0087 G, W	~~62~~ 20 B, ee	~~89~~ 30 B, ee		65FR31682 ~~65FR66443~~ 80FR36986
103	beta-Endosulfan	33213659	0.22 G, W	0.056 G, W	0.034 G, W	0.0087 G, W	~~62~~ 20 B, ee	~~89~~ 40 B, ee		65FR31682 ~~65FR66443~~ 80FR36986
104	Endosulfan Sulfate	1031078					~~62~~ 20 B, ee	~~89~~ 40 B, ee		~~65FR31682~~ ~~65FR66443~~ 80FR36986
105	Endrin	72208	0.086 K	0.036 K, N	0.037 G	0.0023 G, X	~~0.059~~ 0.03 ee	~~0.060~~ 0.03 ee	2 ee	68FR75510 80FR36986 SDWA
106	Endrin Aldehyde	7421934					~~0.29~~ 1 B, ee	~~0.30~~ 1 B, H, ee		~~65FR66443~~ 80FR36986
107	Heptachlor	76448	0.52 G	0.0038 G, X	0.053 G	0.0036 G, X	~~0.000079~~ 0.0000059 B, C	~~0.000079~~ 0.0000059 B, C	0.4 C	65FR31682 ~~65FR66443~~ 80FR36986 SDWA
108	Heptachlor Epoxide	1024573	0.52 G, U	0.0038 G, U, X	0.053 G, U	0.0036 G, U, X	~~0.000039~~ 0.000032 B, C	~~0.000039~~ 0.000032 B, C	0.2 C	65FR31682 ~~65FR66443~~ 80FR36986 SDWA
109	Polychlorinated Biphenyls PCBs	--		0.014 M, X		0.03 M, X	0.000064 B, C, M	0.000064 B, C, M	0.5 C	65FR31682 65FR66443 SDWA

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
110	Toxaphene	8001352	0.73	0.0002 X	0.21	0.0002 X	~~0.00028~~ 0.00070 B, C	~~0.00028~~ 0.00071 B, C	3 C	65FR31682 ~~65FR66443~~ 80FR36986 SDWA
111	3-Methyl-4-Chlorophenol	59507					500 T, ee	2,000 T, ee		80FR36986

Footnotes:

A This water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5-84-033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.

B This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

C This criterion is based on carcinogenicity of 10^{-6} risk. As prescribed in Section E of this regulation, application of this criterion for permit effluent limitations requires the use annual average flow or comparable tidal condition as determined by the Department.

D Freshwater and saltwater criteria for metals are expressed in terms of total recoverable metals. As allowed in Section E of this regulation, these criteria may be expressed as dissolved metal for the purposes of deriving permit effluent limitations. The dissolved metal water quality criteria value may be calculated by using these 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term "Conversion Factor" (CF) represents the conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs). See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria", October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mail code RC4100, Washington, DC 20460; and 40CFR§131.36(b)(1). Conversion Factors can be found in Attachment 1 – Conversion Factors for Dissolved Metals.

E The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 25 mg/L as expressed as $CaCO_3$. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$ (CF), or CCC (dissolved) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$ (CF) and the parameters specified in Attachment 2 – Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent. As noted in footnote D above, the values in this appendix are expressed as total recoverable, the criterion may be calculated from the following: CMC (total) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$, or CCC (total) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$.

F Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMC = exp(1.005(pH)-4.869); CCC = exp(1.005(pH)-5.134). Values displayed in table correspond to a pH of 7.8.

G This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA

440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

H No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the *1986 Quality Criteria for Water*. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

I This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulation (NPDWR).

J EPA has not calculated a 304(a) human health criterion for this contaminant. The criterion is the Maximum Contaminant Level developed under the Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulation (NPDWR).

K This criterion is based on a 304(a) aquatic life criterion that was issued in the *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water*, (EPA-820-B-96-001, September 1996). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

L The CMC = 1/[(f1/CMC1) + (f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 µg/~~l~~L and 12.82 µg/~~l~~L, respectively.

M This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)

N The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

O This state criterion is also based on a total fish consumption rate of 0.0175 kg/day.

P This water quality criterion is expressed ~~as µg~~ as µg free cyanide (as CN)/L.

Q This value was announced (61FR58444-58449, November 14, 1996) as a proposed GLI 303 I aquatic life criterion.

S This water quality criterion for selenium is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor (0.996 – CMC or 0.922 – CCC) that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.

T The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

U This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.

V There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.

W This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

X This criterion is based on a 304(a) aquatic life criterion issued in 1980 or 1986, and was issued in one of the following documents: Aldrin/Dieldrin (EPA440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endrin (EPA 440/5-80-047), Heptachlor (EPA 440/5-80-052), Polychlorinated Biphenyls (EPA 440/5- 80-068), Toxaphene (EPA 440/5-86-006). This CCC is based on the Final Residue value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the EPA no longer uses the Final Residue value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

Y This water quality criterion is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5-84-033), Cadmium (~~EPA 440/5-84-032~~ EPA-820-R-16-002), Chromium (EPA 440/5-84-029), Copper (EPA 440/5-84-031), Cyanide (EPA 440/5-84-028), Lead (EPA 440/5-84-027), Nickel (EPA 440/5-86-004), Pentachlorophenol (EPA 440/5-86-009), Toxaphene, (EPA 440/5-86-006), Zinc (EPA 440/5-87- 003).

Z When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.

aa The selenium criteria document (EPA 440/5-87-006, September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

bb This water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5-84-026, January 1985). The saltwater CCC of 0.025 ~~u~~µg/L given on page 23 of the criteria document is based on the Final Residue value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the EPA no longer uses the Final Residue value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

cc This water quality criterion was derived in *Ambient Water Quality Criteria Saltwater Copper Addendum* (Draft, April 14, 1995) and was promulgated in the Interim Final National

Toxics Rule (60FR22228-222237, May 4, 1995).

dd This water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.

ee This criterion is a noncarcinogen. As prescribed in Section E of this regulation, application of this criterion for determining permit effluent limitations requires the use of 7Q10 or comparable tidal condition as determined by the Department.

gg This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).

hh ~~Although a new RfD is available in IRIS, the surface water criteria will not be revised until the National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) is completed, since public comment on the relative source contribution (RSC) for chloroform is anticipated.~~ This recommended water quality criteria for benzene was derived using a toxicity value equal to the reference dose (RfD) multiplied by the relative source contribution (RSC) for noncarcinogenic effects, or a toxicity value equal to 10^{-6} divided by the cancer slope factors (CSF) for carcinogenic effects. The EPA selected a CSF range of 1.5×10^{-2} per mg/kg-d to 5.5×10^{-2} per mg/kg-d for benzene based on a 2000 EPA IRIS assessment. In addition to the toxicity value, the EPA considered body weight, drinking water intake, aquatic trophic levels, fish consumption rate, and bioaccumulation factors in the water quality criteria derivation as identified in EPA 820-R-15-009 (June 2015). Based on these factors the EPA identifies a range of recommended benzene criteria in the Ambient Water Quality Criteria Summary (Section 7.3 of EPA 820-R-15-009). The EPA recommends the lower ambient water quality criteria based on the carcinogenic effects of benzene.

ii Although EPA has not published a completed criteria document for phthalate, it is EPA's understanding that sufficient data exist to allow calculation of aquatic life criteria.

jj This recommended water quality criterion is expressed as total cyanide, even though the IRIS RfD the EPA used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no ~~'bioavailalbility'~~ 'bioavailability' to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g.,$FE_4[FE(CN)_6]_3$), this criterion may be overly conservative.

kk This recommended water quality criterion was derived using the cancer slope factor of 1.4 (Linear multi-stage model (LMS) exposure from birth).

ll Freshwater copper criteria may be calculated utilizing the procedures identified in EPA-822-R-07-001.

mm HAA5 means five haloacetic acids (monochloracitic acid, dichloroacetic acid, trichloroacetic acid, bromoacetic acid and dibromoaccetic acid).

nn This criterion has been revised to reflect the EPA's cancer slope factor (CSF) or reference dose (RfD), as contained in the Integrated Risk Information System (IRIS) as of (Final FR Notice June 10, 2009). The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health

Amend Non Priority Pollutants in its entirety to read:

NON PRIORITY POLLUTANTS

	Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
1	Alachlor								2 M	SDWA
2	Ammonia	7664417	CRITERIA ARE pH AND TEMPERATURE DEPENDENT - SEE DOCUMENT FOR DETAILS C							EPA822-R99-014 EPA440/5-88-004
3	Aesthetic Qualities		NARRATIVE STATEMENT AND NUMERIC CRITERIA – SEE TEXT							Gold Book
4	Atrazine								3 M	SDWA
5	Bacteria		FOR PRIMARY CONTACT RECREATION AND SHELLFISH USES – SEE TEXT							Gold Book
6	Barium	7440393					1,000 A, L		2,000 L	Gold Book
7	Carbofuran	1563662							40 L	SDWA
8	Chlorine	7782505	19	11	13	7.5			G	Gold Book SDWA
9	Chlorophenoxy Herbicide 2, 4, 5, -TP	93721					~~10~~10 100 ~~A,~~ L	400 L	50 L	~~Gold Book~~ 80FR36986 SDWA
10	Chlorophenoxy Herbicide 2, 4-D	94757					~~100~~100 1,300 ~~A,~~ L	12,000 L	70 L	~~Gold Book~~ 80FR36986 SDWA
11	Chlorophyll *a*		NARRATIVE STATEMENT AND NUMERIC CRITERIA – SEE TEXT							State Standard
12	Chloropyrifos	2921882	0.083 F	0.041 F	0.011 F	0.0056 F				Gold Book

	Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
13	Color		NARRATIVE STATEMENT – SEE TEXT							State Standard
14	Dalapon	75990							200 L	SDWA
15	Demeton	8065483		0.1 E		0.1 E				Gold Book
16	1,2-Dibromo-3-chloropropane (DBCP)	96128							0.2 M	SDWA
17	Di(2-ethylhexyl) adipate	103231							400 L	SDWA
18	Dinoseb	88857							7 L	SDWA
19	Dinitrophenols	25550587					~~69~~69 10 L	~~5,300~~5,300 1,000 L		~~65FR66443~~ 80FR36986
20	Nonylphenol	1044051	28	6.6	7.0	1.7				71FR9337
21	Diquat	85007							20 L	SDWA
22	Endothall	145733							100 L	SDWA
23	~~Ether, Bis Chloromethyl~~ Bis(Chloromethyl) Ether	542881					~~0.00010~~0.00010 0.00015 D, M	~~0.00029~~0.00029 0.017 D, M		~~65FR66443~~ 80FR36986

	Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
24	Cis-1, 2-dichloroethylene	156592							70 L	SDWA
25	Ethylene dibromide								0.05 M	SDWA
26	Fluoride	7681494							4000 L	SDWA
27	Glyphosate	1071836							700 L	SDWA
28	Guthion	86500		0.01 E		0.01 E				Gold Book
29	Hexachlorocyclo-hexane-Technical	~~319868~~ 608731					~~0.0123~~0.0123 0.0066 L	~~0.0414~~0.0414 0.010 L		~~Gold Book~~ 80FR36986
30	Malathion	121755		0.1 E		0.1 E				Gold Book
31	Methoxychlor	72435		0.03 E		0.03 E	~~100~~100 0.02 A, L	0.02 L	40 L	Gold Book 80FR36986 SDWA
32	Mirex	2385855		0.001 E		0.001 E				Gold Book
33	Nitrates	14797558					10, 000 L		10, 000 L	SDWA Gold Book
34	Nitrites	14797650							1,000 L	SDWA
35	Nitrogen, Total		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							State Standard

	Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
36	Nitrosamines						0.0008 L	1.24 L		Gold Book
37	Nitrosodibutylamine, N	924163					0.0063 A, M	0.22 A, M		65FR66443
38	Nitrosodiethylamine, N	55185					0.0008 A, M	1.24 A, M		Gold Book
39	Nitrosopyrrolidine, N	930552					0.016 M	34 M		65FR66443
40	Oil and Grease		NARRATIVE STATEMENT – SEE TEXT							Gold Book
41	Oxamyl	23135220							200 L	SDWA
42	Oxygen, Dissolved	7782447	WARMWATER, COLDWATER, AND EXCEPTIONS FOR NATURAL CONDITIONS - SEE TEXT K							Gold Book State Standard
43	Diazinon	333415	0.17	0.17	0.82	0.82				71FR9336
44	Parathion	56382	0.065 H	0.013 H						Gold Book
45	Pentachlorobenzene	608935					~~1.4~~1.4 0.1 E	~~1.5~~1.5 0.1 E		~~65FR66443~~ 80FR36986
46	pH		SEE TEXT I							Gold Book State Standard
47	Phosphorus, Total		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							State Standard

	Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
48	Picloram	1918021							500 L	SDWA
49	Salinity		NARRATIVE STATEMENT - SEE TEXT							Gold Book
50	Simazine	122349							4 L	SDWA
51	Solids,Suspended,and Turbidity		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							Gold Book State Standard
52	Styrene	100425							100 L	SDWA
53	Sulfide-Hydrogen Sulfide	7783064		2.0 E		2.0 E				Gold Book
54	Tainting Substances		NARRATIVE STATEMENT - SEE TEXT							Gold Book
55	Temperature		SPECIES DEPENDENT CRITERIA - SEE TEXT J							Red Book
56	1, 2, 4, 5-Tetrachlorobenzene	95943					~~0.97~~ ~~0.97~~ 0.03 D	~~1.1~~1.1 ~~1.1~~ 0.03 D		~~65FR66443~~ 80FR36986
57	Tributyltin (TBT)	688733	0.46	0.063	0.37	0.010				EPA 822-F-00-008
58	2, 4, 5-Trichlorophenol	95954					~~1,800~~ 300 B, D	~~3,600~~ 600 B, D		~~65FR66443~~ 80FR36986
59	Xylenes, Total								10, 000 L	SDWA

Non Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of: Water & Organism (µg/L)	For Consumption of: Organism Only (µg/L)	MCL (µg/L)	
60	Uranium								30	SDWA
61	Beta particles and photon emitters								4 Millirems/yr	SDWA
62	Gross alpha particle activity								15 picocuries per liter (pCi/l)	SDWA
63	Radium 226 and Radium 228 (combined)								5 pCi/l	SDWA

Footnotes:

A This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book.

B The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.

C According to the procedures described in the *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Attachment 3 - Calculation of Freshwater Ammonia Criterion are satisfied.

D This criterion has been revised to reflect ~~The~~ the Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

E The derivation of this value is presented in the Red Book (EPA 440/9-76-023, July, 1976).

F This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in the following criteria document: Chloropyrifos (EPA 440/5-86-005).

G A more stringent Maximum Residual Disinfection Level (MRDL) has been issued by EPA under the Safe Drinking Water Act. Refer to S.C. Regulation 61-58, *State Primary Drinking Water Regulations*.

H This value is based on a 304(a) aquatic life criterion that was issued in the *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA-820-B-96-001). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

I South Carolina has established some site-specific standards for pH. These site-specific standards are listed in S.C. Regulation 61-69, *Classified Waters*.

J U.S. EPA, 1976, Quality Criteria for Water 1976.

K South Carolina has established numeric criteria in Section G for waters of the State based on the protection of warmwater and coldwater species. For the exception to be used for waters of the State that do not meet the numeric criteria established for the waterbody due to natural conditions, South Carolina has specified the allowable deficit in Section D.4. and used the following document as a source. U.S. EPA, 1986, Ambient Water Quality Criteria for Dissolved Oxygen, EPA 440/5-86-003, National Technical Information Service, Springfield, VA. South Carolina has established some site-specific standards for DO. These site-specific standards are listed in S.C. Regulation 61-69, *Classified Waters*.

L This criterion is a noncarcinogen. As prescribed in Section E of this regulation, application of this criterion for determining permit effluent limitations requires the use of 7Q10 or comparable tidal condition as determined by the Department.

M This criterion is based on an added carcinogenicity risk. As prescribed in Section E of this regulation, application of this criterion for permit effluent limitations requires the use of annual average flow or comparable tidal condition as determined by the Department.

R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health

Amend Attachment 2 - Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent in its entirety to read:

Attachment 2 - Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

Chemical	m_A	b_A	m_C	b_C	Freshwater Conversion Factors (CF)	
					Acute	Chronic
Cadmium	~~1.0166~~ 0.9789 A	- ~~3.924~~ 3.866 A	~~0.7409~~ 0.7977 A	- ~~4.719~~ 3.909 A	1.136672-[ln (hardness)(0.041838)]	1.101672-[ln (hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Copper	0.9422	-1.700	0.8545	-1.702	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	1.46203-[ln (hardness)(0.145712)]	1.46203-[ln (hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	--	--	0.85	--
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Hardness-dependent metals criteria may be calculated from the following:
CMC (total) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$, or CCC (total) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$
CMC (dissolved) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$ (CF), or CCC (dissolved) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$ (CF).

Footnotes:

A This parameter was issued by the EPA in Aquatic Life Ambient Water Quality Criteria Cadmium - 2016 (EPA-820-R-16-002).

ATTACHMENT D
DRAFT STATE REGISTER NOTICE OF PROPOSED REGULATION
PROPOSED AMENDMENT OF R.61-68, WATER CLASSIFICATIONS AND STANDARDS
September 8, 2016

Document No.
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 48-1-10 et seq.

R.61-68, Water Classifications and Standards

Preamble:

The Department proposes to amend R.61-68 to strengthen and improve the existing regulation and make appropriate revisions of the State's water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the Federal Clean Water Act ("CWA"). In accordance with Section 303(c)(2)(B) of the CWA, the Department reviews, and amend at its discretion, this regulation once every three years in order to incorporate desirable most recently published Federal criterion recommendations and guidance. Hence, this review process is often referred to as the "triennial review." The Department proposes to adopt a revised standard for ambient water quality criteria for the protection of human health for ninety-four chemical pollutants, and a revised standard for aquatic life water quality criteria for cadmium to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

A Notice of Drafting was published in the State Register on February 26, 2016. The notice was placed on the Department's water quality standards webpage and circulated to stakeholders and other interested parties. The Notice of Drafting was also published on the Department's Regulatory Page in its DHEC Regulation Development Update. Comments were received and used in the drafting of the proposed regulation.

Discussion of Proposed Revisions

The Discussion of Proposed Revisions is submitted as Attachment B and is omitted here to conserve space in the agenda item.

Notice of Staff Informational Forum and Public Comment Period:

Staff of the Department of Health and Environmental Control invites the public and regulated community to attend a staff-conducted informational forum to be held on October 24, 2016, at 1:00 p.m. in Peeples Auditorium, third floor of the Sims Building at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to answer questions, clarify any issues, and receive comments from interested persons on the proposed amendments to R.61-68, Water Classifications and Standards.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Andrew Edwards at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; by email at edwardaj@dhec.sc.gov or fax at (803) 898-4215.

Comments received at the forum and/or submitted in writing by the close of the comment period on October 24, 2016, no later than 5:00 p.m. shall be considered by staff in formulating the final proposed regulations for public hearing on December 8, 2016, as noticed below. Comments received shall be submitted in a Summary

of Public Comments and Department Responses for the Board of Health and Environmental Control's consideration at the public hearing.

Copies of the proposed amendments for public comment as published in the State Register on September 23, 2016, may be obtained in the Department's Regulation Development Update on the Department's Regulatory Internet site under the Water category at: http://www.dhec.sc.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/. A copy can also be obtained by contacting Andrew Edwards, Water Quality Standards Coordinator at the above address or by calling (803) 898-1271, or by email at edwardaj@dhec.sc.gov.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendments to R.61-68, Water Classifications and Standards at a public hearing to be conducted by the Board of the Department of Health and Environmental Control at its regularly scheduled meeting on December 8, 2016, at 10:00 a.m. The public hearing will be held in room 3420 (Board Room), Third Floor, Aycock Building of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. Notice of cancellation or any change in meeting times will be noticed in the Board meeting agenda at least 24 hours in advance of the meeting. The Board agenda is published by the Department of Health and Environmental Control and can be accessed on the Internet at http://www.scdhec.gov/Agency/docs/AGENDA.pdf. Information on the public hearing can be obtained by calling the Clerk of the Board at (803) 898-3309. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street entrance and register at the front desk.

Preliminary Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

The Statement of Need and Reasonableness is submitted as Attachment A and is omitted here to conserve space in the agenda item.

Statement of Rationale:

The Statement of Rationale is submitted as Attachment A and is omitted here to conserve space in the agenda item.

Text of Proposed Amendment for Public Notice and Comment

The Text of the Proposed Amendment for Public Notice and Comment is submitted as Attachment C and is omitted here to conserve space in the agenda item.

ATTACHMENT E
SUMMARY OF PUBLIC COMMENTS DEPARTMENTAL RESPONSES FOR THE REVISION OF
Regulation 61-68, Water Classifications and Standards
September 8, 2016

Deletions are shown with ~~Strikethrough~~ print.
Additions are shown with Underline print.

Comment #1:

***Reference &Topic**:*	***Commenter:***
Nutrient Standards	Chris Starker, Upstate Forever Gerritt Jöbsis, American Rivers Ann S. Timberlake, Conservaton Voters of South Carolina Bill Stangler, Congaree Riverkeeper Emma Gerald Boyer, Waccamaw Riverkeeper Katie Zimmerman, Coastal Conservation League

Comments Received:
The Department should establish instream nutrient standards in order to more fully protect surface waters.

Department Response to Comment #1

The Department completed the process of promulgating numeric nutrient criteria for lakes of forty acres or more in 2001. These lake standards are implemented with TMDLs and permit limits on dischargers to protect those downstream uses (lakes).

The Department has a phased nutrient promulgation schedule to focus initially on criteria for estuaries and then develop criteria for rivers and streams. The Department currently plans to move forward with numeric nutrient criteria for estuaries during 2017 and will address rivers and streams during the subsequent triennial review period. The reason for focusing initially on criteria for estuaries is that we believe we have gathered substantial data to support that effort and this data is currently lacking to support the development of nutrient criteria for rivers and streams. This phased approach is part of a plan submitted to EPA consistent with the CWA. The Department proposes no changes to Regulation 61-68 at this time.

Comment #2:

***Reference &Topic**:*	***Commenter:***
Flow Standards	Chris Starker, Upstate Forever Gerritt Jöbsis, American Rivers Ann S. Timberlake, Conservaton Voters of South Carolina Bill Stangler, Congaree Riverkeeper Emma Gerald Boyer, Waccamaw Riverkeeper Katie Zimmerman, Coastal Conservation League

Comments Received:

The Department should develop narrative and numeric standards for stream flow that would fully protect the waters of the State. The Department should convene a stakeholder group to develop narrative and numeric standards for stream flow as part of the 2016 Triennial Review.

Department Response to Comment #2
South Carolina, under the South Carolina Surface Water Withdrawal, Permitting Use, and Reporting Act, effective January 1, 2011, has already set protective stream flow criteria and a permitting program for water withdrawals and uses of surface waters. This has previously been addressed within the scope of Regulation 61-119, Surface Water Withdrawal, Permitting, and Reporting.

Comment #3:

Reference &Topic:	***Commenter:***
Updated Human Health Criteria	Chris Starker, Upstate Forever Gerritt Jöbsis, American Rivers Ann S. Timberlake, Conservaton Voters of South Carolina Bill Stangler, Congaree Riverkeeper Emma Gerald Boyer, Waccamaw Riverkeeper Katie Zimmerman, Coastal Conservation League
Comments Received: The Department should update ambient water quality criteria for chemical pollutants.	
Department Response to Comment #3	
The Department proposes amending the text of Regulation 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Human Health to include the updated criteria for the 94 chemical pollutants. The text of the proposed amendment is submitted as Attachment C.	

Comment #4:

Reference &Topic:	***Commenter:***
Water Quality Standards Regulation	Chris Starker, Upstate Forever Gerritt Jöbsis, American Rivers Ann S. Timberlake, Conservaton Voters of South Carolina Bill Stangler, Congaree Riverkeeper Emma Gerald Boyer, Waccamaw Riverkeeper Katie Zimmerman, Coastal Conservation League
Comments Received: The Department should review and revise Water Quality Standards to improve the effectiveness in restoring and maintaining water quality in waters of the U.S. for consistency with recent EPA regulations.	
Department Response to Comment #4	
The Department has reviewed Water Quality Standard Regulatory Revisions and determined that no changes to Regulation 61-68 are necessary in order to stay current with EPAs recent regulation.	

Comment #5:

Reference &Topic:	***Commenter:***
Shem Creek Reclassification	Andrew Wunderley, Esq., Charleston Waterkeeper Cheryl Carmack
Comments Received:	

The Department should reclassify Shem Creek from Class SB to Class SA. Class SA affords a stronger safeguard for primary and secondary recreational uses that is more protective of public health and safety. Shem Creek's current uses are now dominated by primary and secondary contact recreation.
Department Response to Comment #5
The Department will consider this request for reclassification outside the scope of this triennial review.

Comment #6:

***Reference &Topic**:*	***Commenter:***
Beach Action Value	Andrew Wunderley, Esq., Charleston Waterkeeper Cheryl Carmack
Comments Received: The Department should adopt the bright-line standard for ocean beach swim advisories prescribed in Regulation 61-68(E)(14)(d)(5). The Department's quality assurance project plan for its Beach Monitoring Program outlines a two-step process for issuing a swim advisory. An advisory is only issued automatically when a single sample exceeds 501 MPN/100 mL. Additionally, an advisory may also be issued when two consecutive samples exceed 104 MPN/100 mL. The Department's beach swim advisory rubric should be more protective of public health and safety. Establishing a bright-line advisory threshold of 104 MPN/100 mL would also bring the Department's swim advisory practice closer to the early warning Beach Action Values outlined in EPA's 2012 Recreational Water Quality Criteria. EPA's Beach Action Values of 60 and 70 MPN/100 mL are based on new epidemiological studies that provide a better picture of the risk of illness associated with swimming in contaminated water and are specifically designed for making advisory decisions.	
Department Response to Comment #6	
The Department's assessment of enterococci for the purposes of issuing swimming advisories uses the current standard of 104/100 mL. Any change in the process for issuing swimming advisories would be addressed in the quality assurance project plan for the Department's Beach Monitoring Program. EPA does not require states to include a Beach Action Value (BAV) in state water quality standards. The use of a BAV of 70/100 mL would result in a significant increase in the sampling effort due to resamples, with an insignificant increase in beach advisories, and therefore does not warrant the change. The Department proposes no changes to Regulation 61-68(E)(14)(d)(5).	

Comment #7:

***Reference &Topic**:*	***Commenter:***
Cadmium Criteria	Larry E. Hatcher, Duke Energy
Comments Received: The Department should adopt the updated recommended aquatic life ambient water quality criteria for cadmium that the EPA published on April 4, 2016.	
Department Response to Comment #7	
The Department proposes amending the text of Regulation 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life to include the updated criteria for cadmium. The text of the proposed amendment is submitted as Attachment C.	

ATTACHMENT F

STATE REGISTER NOTICE OF DRAFTING
PROPOSED AMENDMENT OF R.61-68, WATER CLASSIFICATIONS AND STANDARDS
February 26, 2016

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend specific sections of Regulation 61-68, Water Classifications and Standards, and Regulation 61-69, Classified Waters. Interested persons are invited to submit their views and recommendations in writing to Kyle D. Maurer, Water Quality Standards Coordinator, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201 or via e-mail at maurerkd@dhec.sc.gov. To be considered, written comments must be received no later than 5:00 p.m. on March 28, 2016, the close of the drafting comment period.

Synopsis:

Section 303(c)(2)(B) of the Federal Clean Water Act (CWA) requires that South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years for the purposes of considering the Environmental Protection Agency's (EPA) most recent numeric and narrative criteria and comply with recent Federal regulatory revisions and recommendations. This process is commonly referred to as the "triennial review," and the Department has prepared this Notice of Drafting for the required triennial review process. The Department proposes amending R.61-68 and R.61-69 with respect to the following topics:

Review and, where appropriate, adoption of updated Federal water quality criteria to reflect the most current final published numeric criteria according to Section 304(a) and Section 307(a) of the CWA. EPA has published the following numeric criteria guidance documents: Final Updated Ambient Water Quality Criteria for the Protection of Human Health, Federal Register Volume 80, Number 124 (June 2015). The June 2015 publication revised human health water quality criteria for ninety-four (94) chemical pollutants based on new assumptions for exposure inputs (body weight, drinking water consumption, and fish consumption), bioaccumulation factors, toxicity values, and relative source contributions.

Review and, where appropriate, adoption of requirements to reflect EPA's Final Rulemaking to Update the National Water Quality Standards Regulation. The final rule was published in the Federal Register on August 21, 2015 (80 FR 51019) and may be found in 40 CFR 131. The State's currently promulgated Water Quality Standards meet the requirements of the rulemaking.

The Department may make additional changes consistent with the goals of the Clean Water Act. The Department may also make stylistic changes to amend both regulations for internal consistency; clarification in wording; corrections of references, grammatical errors, outlining/codification and such other changes as may be necessary to improve the overall quality of the regulation pursuant to regulation drafting standards required by the Legislative Council.

Legislative review will be required.

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
SUMMARY SHEET

September 8, 2016

(X) ACTION
( ) INFORMATION

I. TITLE: Proposed Amendments of Regulation 61-94, *WIC Vendors*
Legislative review is required.

II SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment

III. FACTS:

1. The South Carolina Department of Health and Environmental Control (Department) proposes amending Regulation 61-94, *WIC Vendors*. Regulation 61-94 has not been substantively updated since 2000. These amendments are necessary to update definitions, references, codification and for the overall improvement and updates to the text of the regulation.

2. The Department of Health and Environmental Control proposes to amend and update Regulation 61-94. This amendment and updates pertain to provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265). The provisions required the establishment of a vendor peer group system, distinct peer competitive price criteria, allowable reimbursement levels for each peer group and other vendor related provisions to ensure program integrity. In addition, a final rule, published by the United States Department of Agriculture, Food and Nutrition Services in the Federal Register on March 4, 2014, revised the WIC food packages. The proposed revisions align the WIC food packages with the Dietary Guidelines for Americans and infant feeding practice guidelines of the American Academy of Pediatrics. This rule also encompassed vendor related amendments. All of the vendor provisions and amendments were implemented to ensure adequate and appropriate monitoring of the Program's food delivery system to prevent fraud, waste and abuse from occurring and to safeguard program benefits.

The Department may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification and overall improvement of the text of the regulation.

3. Pursuant to S.C. Code Section 43-5-910, the proposed amendments of Regulation 61-94 require legislative review.

4. The Department previously proposed an amendment to R.61-94 identified in State Register Document No.4581. That proposed amendment was cancelled and the Department is reinitiating the statutory process to amend R.61-94 by publication of a new Notice of Drafting on July 22, 2016. The Notice of Drafting was also published on the Department's Regulation Development Update website. A copy of the Notice of Drafting is submitted as Attachment E.

5. Following publication of the Notice of Drafting in the *State Register*, the Department did not receive any comments during the drafting comment period.

6. A Summary of Proposed Revisions and Text of the Proposed Amendments of R.61-94 are submitted as Attachments B and C.

7. Pursuant to agency internal review policy, all appropriate Department personnel have reviewed the proposed amendments.

8. The Department requests initial Board approval to publicly notice the proposed amendments to provide opportunity for public comment. If approved, a Notice of Proposed Regulation will be published in the State Register on September 23, 2016 and a public hearing before the Board will be scheduled for November 10, 2016. A copy of the draft Notice of Proposed Regulation is submitted as Attachment E.

IV. ANALYSIS:

1. Existing R.61-94 outlines requirements included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) and an interim rule published by USDA in the Federal Register revising the WIC food packages. The vendor related amendments of this interim rule were implemented to prevent fraud, waste and abuse of program benefits. The amendments will also include stylistic changes. A Statement of Need and Reasonableness and Rationale is submitted as Attachment A.

V. RECOMMENDATION:

The Department recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register*, provide opportunity public comment, receive and consider comments, and allow the Department to proceed with a public hearing before the Board.

E.A. "Beth" De Santis
Director
Bureau of Maternal and Child Health

Lisa A. Davis
Director of Health Services

Attachments

A. Statement of Need and Reasonableness
B. Summary of Proposed Revisions
C. Text of Proposed Amendments
D. Draft of *State Register* Notice of Proposed Regulation
E. *State Register* Notice of Drafting

ATTACHMENT A
Statement of Need and Reasonableness
Regulation 61-94, WIC Vendors
September 8, 2016

This Statement of Need and Reasonableness and Rationale was determined by staff analysis pursuant to S.C. Code Sections 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: The proposed amendments to R.61-94, *WIC Vendors* includes provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L.108-265) and the interim rule published by the USDA, Food and Nutrition Services in the Federal Register that revised the WIC food packages. The interim rule also contained WIC vendor provisions and amendments to ensure adequate and appropriate monitoring of the Program's food delivery system. Stylistic changes will be made, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification and overall improvement of the text of the regulation.

Legal Authority: The legal authority for R.61-94 is S.C. Code Section 43-5-910.

Plan for Implementation: The proposed amendments will take effect upon approval by the S.C. General Assembly, and publication in the *State Register*. This revised regulation, to include these latest amendments, will be published on the Department's Laws and Regulations website under the Maternal and Child Health category and on the S.C. Legislature Online website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION AND EXPECTED BENEFITS:

The proposed amendments are needed to realize the following anticipated benefits:

1. The amendments update R.61-94 to include provisions in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) that require the establishment of a vendor peer group system, distinct peer competitive price criteria, allowable reimbursement levels for each peer group and other vendor related provisions to ensure program integrity.

2. The amendments include revisions to the WIC food packages as published in the interim rule by the USDA, Food and Nutrition Services in the Federal Register. The revisions align the WIC food packages with the Dietary Guidelines for Americans and infant feeding practice guidelines of the American Academy of Pediatrics.

3. The Department proposes vendor related amendments. The vendor provisions and amendments will be implemented to ensure adequate and appropriate monitoring of the Program's food delivery system to prevent fraud, waste and abuse from occurring and to safeguard program benefits.

The above amendments are reasonable to realize the above benefits because they provide an efficient procedure without any anticipated cost increase, provide clear standards and criteria for the regulated community.

DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated cost increases to the State or its political subdivisions in complying with these proposed amendments. Amendments to R.61-94 will benefit the regulated community and the general public by implementing provisions to ensure program integrity. Participants served by the Program will benefit from these amendments by the provision of more nutritious foods.

The amendments also include corrections or clarity and readability and make technical corrections to ensure consistency with existing federal regulations.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The changes are not anticipated to have any negative effect on the environment or public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment or public health associated with these amendments.

Statement of Rationale:

The Department proposes amending R.61-94, *WIC Vendors*, as a result of vendor related provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) and an interim rule, published by the United States Department of Agriculture, Food and Nutrition Services in the Federal Register on December 6, 2007, revising the WIC food packages. The vendor related amendments of this interim rule were implemented to prevent fraud, waste and abuse of program benefits. The amendments will also include stylistic changes.

ATTACHMENT B
Summary of Proposed Revisions
For Regulation 61-94, WIC Vendors

September 8, 2016

SECTION CITATION/EXPLANATION OF CHANGE:

The statutory authority for this regulation is added under the title of the regulation.

TABLE OF CONTENTS:

The table was revised to reflect the proposed amendments.

61-94.101 Definitions

Section 61-94.101(C) - Amended to update the Federal name of the program.
Section 61-94.101(D) - Amended to update the State name of the program.
Section 61-94.101(F) - Amended to remove food as part of a store's title.

61-94.201 Approval of Vendors

Section 61-94.201(B)(1) - Amended to add that a vendor can request an application by phone.
Section 61-94. 201(B)(2) - Amended to include the documents that are included in the vendor application packet.
Section 61-94.201(B)(3) - Amended to state that all WIC vendors must be authorized to accept SNAP, with the exception of pharmacies.
Section 61-94.201(B)(4) - Deleted
Section 61-94.201(B)(4) - New 61-94.201(B)(4) and re-numbered 61-94.201(B)(4) – 61-94.201(B)(17). Amended to ensure that an employee of a store shall not handle a WIC transaction if that employee is also employed by the WIC Program.
Section 61-94.201(B)(6) - New #61-94.201(B)(5) - Amended to state that a WIC vendor applicant must pass a pre-approval visit before authorization.
Section 61-94.201(B)(5) – Re-numbered 61-94.201(B)(9) to 61-94.201(B)(5)
Section 61-94.201(B)(7) - Deleted
Section 61-94.201(B)(8) - Deleted
Section 61-94.201(B)(10) - New # 61-94.201(B)(7) – Amended to update terminology.
Section 61-94.201(B)(11) - New # 61-94.201(B)(8)
Section 61-94.201(B)(12) - New # 61-94.201(B)(9) – Amended to add store type by Region.
Section 61-94.201(B)(13) – New # 61-94.201(B)(10) – Amended to update terminology.
Section 61-94.201(B)(14) – New # 61-94.201(B)(11) – Amended to update terminology.
Section 61-94.201(B)(15) - New # 61-94.201(B)(12) – Added to require South Carolina location.
Section 61-94.201 (B)(16) - New # 61-94.201(B)(13) – Added to require business hours of operations (as stated in the Vendor agreement).
Section 61-94.201(B)(17) - New # 61-94.201(B)(14) – Amended to add language that a vendor or its management cannot have any convictions or civil judgments that indicate a lack of business integrity.
Section 61-94.201(B) - Added # 61-94.201(B)15(i)-(xv) - Amended to update/revise the list of allowable foods that are authorized for the WIC Program. This section was re-numbered to adjust the codification.
Section 61-94.201(C)(1) – Amended to update the name of the Program.

Section 61-94.201(C) – Added # 61-94.201(C)(4) to include the requirement that a store complete and submit a price survey twice a year.

61-94.301 Redemption of Food Instruments

Section 61-94.301(A) – Amended to state that a vendor can only provide foods as specified in the WIC Food Guide.
Section 61-94.301(E) – Amended to clarify that a manual food instrument should not be accepted without a program stamp.
Section 61-94.301(G) – Deleted
Section 61-94.301(J)(1) – Amended to delete trading stamps as a promotional item.

61-94.401 Submitting Food Instruments for Payment

Section 61-94.401(A) – Revised the method in which the vendor receives payment for food instruments redeemed.
Section 61-94.401(B) – Amended to clarify when the vendor must stamp the food instrument.
Section 61-94.401(C) – Deleted

61-94.501 Payment of Food Instruments

Section 61-94.501(A) - Revised the language on the rejection of food instruments when improperly redeemed by the vendor.
Section 61-94.501(A)(1) – Revised to add clarifying language.
Section 61-94.501(A)(2) – Revised to add clarifying language.
Section 61-94.501(A)(3) – Revised for clarity.
Section 61-94.501(A)(4) - Revised to add clarifying language.
Section 61-94.501(A)(7) – Revised to update the language.
Section 61-94.501(A)(8) – Deleted
Section 61-94.501(A)(10) – Deleted
Section 61-94.501(A) - New # 61-94.501(A)(10) - Amended to add that food instruments deposited more than thirty days after the "Void After" date will be rejected.
Section 61-94.501– Amended to add items 61-94.501(B) through 61-94.501(E) to provide guidance on when a claim against a vendor can be established.

61-94.601 Correction of Rejected Food Instruments

Section 61-94.601(A) – Revised to delete unnecessary language.
Section 61-94.601(B) – Revised to add clarifying language.

61-94.701 Monitoring of Vendors

Section 61-94.701(A) – Revised to delete unnecessary language.
Section 61-94.701(B) – Revised for clarity.

61-94.801 Disqualifications
61-94.801Amended section title to read "Disqualifications and Sanctions"

Section 61-94.801 – This section was amended to include the mandatory vendor sanctions as stipulated by federal regulations.
Section 61-94.801(B) – 61-94.801(F) – statements deleted

Section 61-94.801 – Added new areas numbered 61-94.801(B) – 61-94.801(E) to include additional reasons for vendor sanctions and disqualifications.

61-94.901 Program Violations

Section 61-94.901 – Revised to delete repetitive language.
Section 61-94.901(1) – Deleted re-numbered 61-94.901(1) - 61-94.901(3)
Section 61-94.901(2) – Changed to # 61-94.901(1)(i) – 61-94.901(1)(vii) – Revised to update the point value for violations.
Section 61-94.901(3) – Changed to # 61-94.901(2)(i) – 61-94.901(2)(ix) – Revised to update the violations and add clarifying language.
Section 61-94.901(4) – This section has been revised and moved to section 61-94.801.

61-94.1001 Administrative Appeals

Section 61-94.1001 – Revised to update the appeals process.

ATTACHMENT C
Text of Proposed Amendment to
Regulation 61-94, WIC Vendors

Regulation 61-94, WIC Vendors

Statutory Authority: S.C. Code Section 43-5-910, 1976, as amended.

Table of Contents

SECTION 101. Definitions.

As used in these Rregulations, the following terms shall have the meaning specified:

(A) DHEC. The South Carolina Department of Health and Environmental Control.

(B) State Agency. The South Carolina Department of Health and Environmental Control.

(C) WIC Program. The Special Supplemental Food Nutrition Program for Women, Infants and Children.

(D) State WIC Program. Division of WIC Services. The WIC Administrative Section of the Bureau of Maternal and Child Health, of the South Carolina Department of Health and Environmental Control.

(E) Food Instrument. The document which is used by a participant to obtain supplemental foods.

(F) WIC Vendor. Any food store or pharmacy approved for participation which has a valid, current WIC Vendor Agreement on file at the State WIC Program Office and continues to meet the minimum criteria for participation as listed in the agreement.

SECTION 201. Approval of Vendors.

(A) Only vendors authorized by the State Agency may redeem food instruments or otherwise provide supplemental foods to participants.

(B) To be authorized for participation as a WIC Vendor, a vendor must:

1. Request, in writing~~,~~ or by phone, a WIC Vendor application ~~form~~packet.

2. Submit a completed application ~~form~~packet to the State WIC Program Office~~.~~, including the WIC Vendor Application, WIC Price Survey, Vendor Agreement, and an IRS W-9, Request for Taxpayer Identification and Certification form.

3. Be ~~eligible~~ authorized to participate in the ~~Food Stamp Program.~~Supplemental Nutrition Assistance Program (SNAP). (Pharmacies are exempt from this requirement.)

~~4. Meet the minimum established health standards for the operation of a food market.~~

~~5~~4. Not be employed by the ~~state or local~~ WIC program nor have a spouse, child, parent, or sibling who is employed by the ~~state WIC or local~~ WIC program~~.~~ serving the county in which the vendor applicant conducts business. The vendor applicant also shall not have an employee who handles, transacts deposits, or stores WIC food instruments who is employed by, or has a spouse, child, or parent who is employed by the WIC Program serving the county in which the vendor applicant conducts business.

~~6~~5. Pass~~Have~~ a pre-approval visit completed by the State WIC Program Office.

~~7. Sign a South Carolina WIC Program Vendor Agreement.~~

~~8. Agree to accept training on WIC procedures.~~

~~9~~6. Inform and train cashiers and other staff on program requirements.

~~10~~7. Ensure employees receive instruction regarding the WIC Program policies, procedures and requirements. ~~Be accountable for the actions of employees in the utilization of WIC Food Instruments.~~

~~11~~8. Maintain the minimum stock of WIC foods as required by the Vendor Agreement.

9. Comply with at least one established definition for store type within the four (4) Regions. Type 1 Chain, Type 2 Franchise, Type 3 Commissary, Type 4 Independent/Convenience and Type 5 Pharmacy.

10. Operate the store at a single, fixed location (no mobile/home delivery stores).

11. Purchase infant formula only from a state approved wholesaler, distributor or supplier.

12. Be located in South Carolina. ~~Provide to WIC participants only those foods authorized by the State WIC Program and in the exact quantities prescribed. These foods shall be those designated as acceptable for use in accordance with nutrient requirements set forth by the United States Department of Agriculture.~~

13. Must be open for business at least six (6) days a week for a minimum of eight (8) consecutive hours a day between the hours of 8 am – 10 pm.

14. Have no convictions or civil judgments within the last six (6) years that indicate a lack of business integrity on the part of the current owners, officers, or managers. Such activities include, but are not limited to: fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

15. Provide to WIC participants only those foods authorized by the State WIC Program and in the exact quantities prescribed.

The following is a list of acceptable foods:

i) Infant formula ~~which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which supplies 67 kilocalories per 100 milliliters or approximately 20 kilocalories per fluid ounce of formula at standard dilution.~~ must be iron-fortified, supply approximately twenty (20) kilocalories per fluid ounce, and not require the addition of any ingredient other than water.

ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal and contains no other ingredients, ~~i.e.,~~ such as fruit, formula or DHA. No organic infant cereal.

iii) Infant juice which contains a minimum of 30 milligrams of Vitamin C per 100 milliliters of single strength or reconstituted frozen juice concentrate. Juice must be pasteurized, 100% unsweetened fruit or vegetable juice. No calcium-fortified or organic juice.

iv) Pasteurized fluid whole, fat free, ~~skim or~~ lowfat or reduced fat milk which is unflavored and contains 400 international units of Vitamin D and 2000 international units of Vitamin A per fluid quart~~.~~; or

v) ~~Evaporated whole or skimmed milk which contains 400 international units of Vitamin D and 2000 international units of Vitamin A per reconstituted quart; or~~ Nonfat dry milk solids may be substituted on a reconstituted quart basis and must contain 400 international units of Vitamin D and 2000 international units of Vitamin A per reconstituted quart; or

vi) ~~Nonfat or lowfat dry milk which contains 400 international units of Vitamin D and 2000 international units of Vitamin A per reconstituted quart; or~~ Quarts and ½ gallons of lactose-free milk (whole, reduced fat, low fat and fat free).

vii) Domestic cheese made from 100% pasteurized milk (~~pasteurized process~~ American, Monterey Jack, ~~Natural~~ Cheddar, ~~Brick, Muenster,~~ & Mozzarella). Block style or sliced, lowfat, reduced fat, low cholesterol and/or low sodium are allowed.

viii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of cereal~~.~~ (no more than 6 grams of sugar per ounce). Half of the cereals authorized must have whole grain as the primary ingredient by weight and meet labeling requirements.

~~ix) Single strength fruit juice or vegetable juice which contains a minimum of 30 milligrams of Vitamin C per 100 milliliters; or~~

~~x) Frozen Concentrated Fruit juice which contains a minimum of 30 milligrams of Vitamin C per 100 milliliters of reconstituted juice.~~

~~xi~~ix) Eggs, Grade A large, white only. ~~or medium~~.

~~xii~~x) Peanut butter, with no added flavorings.

xi~~ii~~) Mature legumes ~~dry peas~~ or beans.

xii) Canned tuna or pink salmon packed in water or oil.

xiii) Infant fruits and vegetables include any variety of single ingredient, commercial infant food fruits or vegetables without added sugars, starches, or salt. No organic infant foods or foods with added DHA.

xiv) Infant meats include any variety of commercial infant food having meat or poultry as a single major ingredient, with added broth or gravy, and no added sugars, salt or DHA.

xv) Whole Grains include whole wheat bread, whole grain bread, brown rice, whole wheat or soft corn tortillas. Whole grain must be the primary ingredient by weight in all whole grain products and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content".

(C) To retain authorization for participation a vendor must:

1. Renew the ~~v~~Vendor ~~a~~Agreement with the State WIC ~~office~~ Program by the established renewal date.

2. Abide by the terms of the Agreement in effect.

3. Have prices which are competitive, based on the WIC Program definition, with similar type stores' prices.

SECTION 301. Redemption of Food Instruments.

In providing supplemental foods to participants, the Vendor shall:

(A) Only provide the supplemental foods as specified ~~on~~ in the WIC ~~f~~Food Guide ~~instrument~~ and only the types, sizes and quantities specified on the food instrument.

(B) Accept food instruments only from individuals who present a valid South Carolina WIC Program ID Card listing them as authorized to redeem the food instruments and receive the supplemental foods.

(C) Provide the supplemental foods at the current price or less than the current price charged to other customers, as indicated on individual food items or shelf labels indicating the price of the items.

(D) Accept food instruments from participants only within the allowed time period, as listed on each food instrument.

(E) Accept manual food instruments only if they have been stamped with a WIC Program ~~authorization~~ stamp.

(F) Refuse to accept any food instruments on which the valid dates or food prescriptions have been altered in any way.

~~(G) Refuse to accept food instruments on which the total costs for the supplemental foods will exceed the "void if exceeds" amount listed on the food instrument.~~

(G~~H~~) Enter the date of purchase and total purchase amount (less tax) for the supplemental foods on the food instruments prior to obtaining the signature of the person authorized to receive the foods.

(H~~I~~) Obtain the signature of the person receiving the supplemental foods and check that signature against the signature on the WIC Program ID Card.

(I~~J~~) Offer WIC participants the same courtesies as other customers, including but not limited to:

1. Providing ~~trading stamps and other~~ promotional specials such as reduced prices on items as advertised.

2. Allowing use of any open check-out line except for those indicated as "cash only".

SECTION 401. Submitting Food Instruments for Payment.

(A) The vendor ~~shall submit~~ must deposit food instruments into their local retail bank within ~~for payment within forty-five (45)~~ thirty (30) days of the "Void after Date". ~~date the supplemental foods were provided.~~

(B) Each food instrument must be stamped with the official WIC vendor stamp provided to the vendor by the State WIC Program Office prior to depositing.

~~(C) An adding machine tape or an invoice indicating the total value of the food instruments being submitted must be attached to each batch of food instruments.~~

SECTION 501. Payment of Food Instruments.

(A) The State Agency may reject ~~deny payment for~~ food instruments improperly redeemed ~~accepted/submitted for payment~~ and may ~~demand refunds~~ request reimbursement for payments already made for improperly redeemed food instruments. Reasons food instruments may be rejected ~~for non-payment~~ include, but are not limited to:

1. Food instruments accepted prior to or after the valid dates.

2. Food instruments on which the date of purchase has not been ~~applied.~~entered.

3. Food instruments on which the purchase amount has not been entered.~~applied or the purchase amount exceeds the "void if amount exceeds" amount.~~

4. Manual f~~F~~ood instruments on which the local WIC Program ~~project validation~~ stamp has not been applied.

5. Food instruments on which a valid WIC vendor stamp has not been applied.

6. Food instruments on which the serial number is illegible.

7. Food instruments on which a valid ~~patient~~ participant signature has not been applied.

~~8. Food instruments on which the purchase amount has been changed/altered in any fashion.~~

~~9~~8. Food instruments on which the valid dates or food prescription/quantities have been altered.

~~10. Food instruments received more than forty-five (45) days following the date of purchase entered on the food instruments.~~

~~11~~9. Food instruments accepted by a vendor which is not an authorized vendor as stipulated in Section 201 of these regulations.

10. Food instruments deposited more than thirty days (30) after the "Void after" date.

(B) The State WIC Program may delay payment or establish a claim if the Program determines the vendor has committed a violation that affects the payment to the vendor. The State WIC Program may offset any claim against current and subsequent amounts to be paid to the vendor. The vendor is responsible for any claim assessed by the State WIC Program.

(C) The State WIC Program, at its discretion, may allow the payment of a civil monetary penalty, in lieu of disqualification, as a result of the Program abuse.

SECTION 601. Correction of Rejected Food Instruments.

(A) Vendors shall have the opportunity to correct food instruments which are rejected for errors. ~~in acceptance/processing.~~

(B) Vendors must justify, correct or provide ~~submit~~ adequate proof that ~~corrected~~ food instruments were accepted according to the procedures listed in Section 401 of these ~~R~~regulations.

(C) The State WIC Program has the authority to refuse payment for food instruments on which proper corrections have not been made or with which adequate proof of proper acceptance has not been received.

SECTION 701. Monitoring of Vendors.

(A) All vendors participating in the WIC Program agree to allow periodic monitoring of their business to assess compliance~~/non-compliance~~ with ~~p~~Program requirements.

(B) During a monitoring visit, the vendor shall allow access to all food instruments accepted and located in the store at the time of the monitoring visit. ~~negotiated the day of the review as requested.~~

SECTION 801. Disqualifications~~.~~ and Sanctions.

(A) The State WIC Program may disqualify a vendor for ~~p~~Program abuse, failure to meet the requirements of the WIC Vendor Agreement, or other just causes.

(B) Mandatory Vendor Sanctions. ~~The State WIC Program is empowered to determine the method for establishing the length of disqualification periods and has the right to apply such disqualification periods, as published in the applicable WIC State Plan of Operations.~~

1. One (1) Year Disqualification. A vendor shall be disqualified from the WIC Program for a period of one (1) year for:

(a) A pattern of providing unauthorized food items in exchange for WIC food instruments, including charging for supplemental food provided in excess of those listed on the WIC check;

(b) A pattern of charging above the maximum allowable price for WIC items;

(c) Intentionally providing false information on the WIC Vendor Application;

(d) Intentionally providing false information on the Vendor Price Survey;

(e) Non-payment of any claim for overcharges to the WIC Program;

(f) Failure to allow monitoring of stores by a WIC Investigator or failure to provide WIC food instruments for review when requested by the WIC Investigator;

(g) Forging a signature on WIC food instruments;

(h) Failure to submit a WIC Vendor Price Survey; or

(i) Failure to attend WIC Vendor Training.

2. Three (3) Year Disqualification. A vendor shall be disqualified from the WIC Program for three (3) years for:

(a) One incident of the sale of alcoholic beverage or tobacco products in exchange for WIC food instruments;

(b) A pattern of claiming reimbursement for the sale of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, failing to supply store records, or failing to allow an audit of such records by the State WIC Program;

(c) A pattern of charging WIC participants more for supplemental food than non-WIC customers or charging participants more than the current shelf price;

(d) A pattern of receiving, transacting and/or redeeming WIC food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(e) A pattern of charging for supplemental food not received by the WIC participant; or

(f) A pattern of providing credit or non-food items, other than alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for WIC food instruments.

3. Six (6) Year Disqualification. A vendor shall be disqualified from the WIC Program for six (6) years for:

(a) One incident of buying or selling WIC food instruments for cash (trafficking);

(b) One incident of buying or selling firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. 802 in exchange for WIC food instruments.

4. Permanent Disqualification. A vendor shall be permanently disqualified from the WIC Program for any conviction of trafficking (buying or selling WIC food instruments for cash) or selling firearms, ammunition, explosives or controlled substances in exchange for a WIC food instrument. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(C) A vendor who has been disqualified from SNAP shall also be disqualified from the WIC Program. This disqualification shall be the same length of time as SNAP disqualification, and may begin at a later date than the SNAP disqualification. This disqualification shall not be subject to administrative or

judicial review under the WIC Program. ~~A vendor who commits fraud or abuse of the program is liable to prosecution under applicable federal, state or local laws.~~

(D) Second Mandatory Sanction. ~~The State WIC Program has the right to request a refund for any and all overcharges made by vendors or for any WIC transaction by a vendor which results in a cost to the agency.~~When a vendor, who has been sanctioned for violating any of the provisions listed in this section, receives a sanction for a second violation of these provisions, the second sanction shall be double the amount of the first.

(E) Third or Subsequent Mandatory Sanctions. ~~The State WIC Program has the right to offset payments to vendors in order to collect refund.~~When a vendor, who has been assessed two or more sanctions for violation of any of the provisions listed in this section, receives a third or subsequent sanction for a violation of these provisions, the third and all subsequent sanctions shall be double the amount of the immediately preceding sanction.

~~(F) The State WIC Program, at its discretion, may allow the payment of a civil money penalty in lieu of disqualification for program abuse.~~

SECTION 901. Program Violations.

Each violation of program regulations has a set point value and a specific time period during which the points will remain on a vendor's record. If a vendor accumulates fifteen (15) or more violation points, the store will be disqualified from the WIC ~~p~~Program. The period of disqualification is determined by the nature of the violation(s), the number of violations and past disqualifications. ~~Any vendor which accrues fifteen (15) or more points shall be disqualified from the program for a period of time within the Department's discretion.~~

~~1. The following violations carry a point value of 15 and remain on a vendor's record for two (2) years:~~

~~(i) Failure to allow monitoring of store by WIC; failure to provide food instruments for review when requested.~~

~~(ii) Non-payment of claim for overcharges made by WIC Program.~~

~~(iii) Intentionally providing false information on the WIC vendor application.~~

~~(iv) Intentionally providing false information on the WIC Vendor Price Survey.~~

~~2~~1. The following violations carry a point value of ~~7.5~~8 and remain on a vendor's record for 18 months~~;~~:

(~~i~~a) Contacting WIC participants in an attempt to recoup funds for instruments not paid by the Program. ~~agency~~

(~~ii~~b) Not providing ~~trading stamps or other~~ "promotional specials" to WIC participants or not accepting cents-off coupons or store discount cards from WIC participants to reduce the amount charged to the program. ~~WIC price (or to provide store incentives.~~

(~~iii~~c) Issuing "RAIN" checks.

(~~iv~~d) Requiring WIC participants to use special check-out lanes~~.~~, ~~N~~not showing WIC participants the same courtesies as other customers~~.~~, or engaging in any act of discrimination involving a WIC participant.

(~~v~~e) Knowingly entering false information on food instruments. ~~check.~~

(~~vi~~f) Requiring participants to make a cash purchase to redeem food instruments. ~~checks.~~

(g) Failure to stock between 4-8 food items as listed in the Vendor Agreement.

~~3~~2. The following violations carry a point value of 5~~.0~~ and remain on a vendor's record for one (1) year:

(~~i~~a) Allowing substitution for foods listed on the food instrument.

~~(ii) Failure to submit WIC Vendor Price Survey or to submit survey in a timely manner.~~

~~(iii) Failure (without just cause) to attend vendor training sessions.~~

(~~iv~~b) Failure to stock between 1-3 food items ~~required quantity and/or variety of foods~~ as listed in the Vendor Agreement.

(~~v~~c) Requiring participants to purchase a specific brand of WIC approved foods when more than one brand is available.

(~~vi~~d) Using a WIC stamp other than the one issued by the ~~agency (DHEC)~~State WIC Program.

(~~vii~~e) Failure to properly redeem food instruments including but not limited to: not asking for I.D. cards, not completing date and purchase price on food instrument prior to obtaining participant's signature.

(~~viii~~f) Not marking WIC items with price labels or shelf tags.

(~~ix~~g) Collecting sales tax on WIC Purchases.

(h) Stocking WIC approved food outside of the manufacturer's expiration date.

(i) Providing (selling or giving) incentive items to WIC participants.

~~4. There are eighteen items which do not have a point value but can lead to or extend a disqualification period.~~

~~(1) Disqualification from the Food Stamp Program shall result in automatic disqualification from the WIC Program. The disqualification shall be the same length of time as the Food Stamp disqualification, may begin at a later date than the Food Stamp Program disqualification, and shall not be subject to administrative or judicial review under the WIC Program.~~

~~(2) Failure to return WIC Vendor Stamp to the WIC Program upon notice of disqualification shall result in a 30 day extension of a disqualification period.~~

~~(3) Failure to meet health department standards for the operation of a food market shall result in a disqualification period, i.e., not having current appropriate health department permit.~~

~~(4) Failure to submit a WIC Vendor Price List after second request shall result in termination of agreement.~~

~~(5) Prices being charged for WIC foods increasing to be more than the allowable percentage (as listed in the current WIC Agreement) of the average prices charged for the same type foods by other stores of the same type shall result in termination of the agreement.~~

~~(6) Providing credit or non-food items, other than alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for food instruments shall result in a three (3) year disqualification.~~

~~(7) Forging signatures on food instruments shall result in automatic disqualification for a period of one (1) year.~~

~~(8) Providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument shall result in a one (1) year disqualification.~~

~~(9) The sale of alcoholic beverages or tobacco products in exchange for food instruments shall result in a three (3) year disqualification.~~

~~(10) Claiming reimbursement for the sale of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time or failing to supply store records or failing to allow an audit of such records by the State WIC Program shall result in a three (3) year disqualification.~~

~~(11) Charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf price shall result in a three (3) year disqualification.~~

~~(12) Receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person shall result in a three (3) year disqualification.~~

~~(13) Charging for supplemental food not received by the participant shall result in a three (3) year disqualification.~~

~~(14) An administrative finding of buying or selling food instruments for cash or selling firearms, ammunition, explosives or controlled substances in exchange for instrument shall result in a six (6) year disqualification.~~

~~(15) A conviction for trafficking (buying or selling food instruments for cash) in food instruments or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments shall result in permanent disqualification.~~

~~(16) When a vendor, who previously has been assessed a sanction for any of the violations listed in items six (6) through fifteen (15), receives another sanction for any of these violations, this Agency shall double the second sanction.~~

~~(17) When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in items six (6) through (15), receives another sanction for any of these violations, this Agency shall double the third sanction and all subsequent sanctions.~~

~~(18) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.~~

SECTION 1001. Administrative Appeals.

~~Any person may submit a written appeal within fifteen days after the receipt of any decision expressing an intent by the Department to impose disqualification, penalties or other such action that would affect that person's participation in the program.~~

~~Any such decision shall be administratively reviewed by the Board of Health and Environmental Control, or its designee, pursuant to the State Administrative Procedures Act and DHEC's Regulation on Contested Cases.~~

All vendors have the opportunity to request a fair hearing (administrative review) regarding certain adverse actions taken by the State Agency. The vendor must provide the State Agency with a written fair hearing request within fifteen days (15) of the receipt of the notice of the adverse action. The written request must list the actions with which the vendor disagrees, as well as reasons the vendor disagrees with these actions. If the vendor does not request a hearing within the fifteen (15) day period following notification, the State Agency's decision becomes final.

If a timely request of final review is filed with the DHEC Clerk of the Board, the Clerk will provide additional information regarding review procedures. If the DHEC Board declines, in writing, to schedule a final review conference, the State Agency's decision becomes final and the vendor may request a contested cased hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed informing the vendor that the Board declined to hold a final review conference.

ATTACHMENT D
Draft State Register Notice of Proposed Regulation for
Regulation 61-94, WIC Vendors

September 8, 2016

Document No._____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
1976 Code Section 43-9-510

Regulation 61-94, *WIC Vendors.*

Preamble:

The Department of Health and Environmental Control ("Department" or "DHEC") proposes amending Regulation 61-94, WIC Vendors. These amendments will incorporate provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L.108-265) and the final rule published by the U.S. Department of Agriculture (USDA) in 2014 that revised the WIC food packages. The final rule also contained WIC vendor provisions and amendments to ensure adequate and appropriate monitoring of the Program's food delivery system. Stylistic changes to the regulation are also proposed.

A Notice of Drafting for these proposed amendments was published in the State Register on July 22, 2016.

See Statements of Need and Reasonableness and Rationale herein.

Section-by-Section Discussion of Proposed Amendments:

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are ~~also~~ provided an opportunity to submit written comments on the proposed amendments of R.61-94 by writing to Berry Kelly, Director, Division of WIC Services, South Carolina Department of Health and Environmental Control, 2100 Bull Street, Columbia, SC 29201; by facsimile at (803) 898-0383; or by e-mail at kellybb@dhec.sc.gov. To be considered, comments must be received no later than 5:00 p.m. on October 24, 2016, the close of the public comment period. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the Board of Health and Environmental Control's consideration at the public hearing noticed below.

Interested persons are also invited to make oral and/or written comments on the proposed amendments of R.61-94 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on November 10, 2016. The Board will conduct the public hearing in the Board Room, Third floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, South Carolina 29201. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda published by the Department twenty-four (24) hours in advance of the meeting at the following address: http://www.scdhec.gov/Agency/docs/AGENDA.PDF. The agenda will also provide notice of cancellation or any change in meeting times. Persons desiring to make oral comments at the hearing are

asked to limit their statements to five minutes or less and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC building, all visitors should enter through the Bull Street entrance and register at the front desk.

Copies of the proposed amendments for public comment as published in the *State Register* on July 22, 2016 may be obtained on the Department's Regulatory Information Internet Site in the DHEC Regulation Development Update at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate. Click on Maternal and Child Health topic and scan down for a copy of the proposed amendments of R.61-94. A copy can also be obtained by contacting Berry Kelly at the above address or by email at kellybb@dhec.sc.gov.

Preliminary Fiscal Impact Statement:

The proposed amendments will have no substantial fiscal or economic impact on the State. Implementation of this regulation will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or State Government due to any inherent requirements of this regulation.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness and Rationale was determined by staff analysis pursuant to S.C. Code Sections 1-23-115(C)(1)-(3) and (9)-(11).

ATTACHMENT E
STATE REGISTER NOTICE OF DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 43-5-910

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend Regulation 61-94, WIC Vendors. Interested persons may submit written comments to Berry Kelly, WIC State Director, Division of WIC Services, South Carolina Department of Health and Environmental Control, 2100 Bull Street, Columbia, South Carolina 29201 or via email at kellybb@dhec.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. August 22, 2016, the close of the drafting comment period.

The Department previously proposed an amendment to R.61-94 identified in State Register Document No.4581. That proposed amendment was cancelled and the Department is reinitiating the statutory process to amend R.61-94 by publication of a new Notice of Drafting on July 22, 2016.

Synopsis:

The Department of Health and Environmental Control proposes to amend and update Regulation 61-94. This amendment and updates pertain to provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265). The provisions required the establishment of a vendor peer group system, distinct peer competitive price criteria, allowable reimbursement levels for each peer group and other vendor related provisions to ensure program integrity. In addition, an interim rule, published by the United States Department of Agriculture, Food and Nutrition Services in the Federal Register on December 6, 2007, revised the WIC food packages. The proposed revisions align the WIC food packages with the Dietary Guidelines for Americans and infant feeding practice guidelines of the American Academy of Pediatrics. This rule also encompassed vendor related amendments. All of the vendor provisions and amendments were implemented to ensure adequate and appropriate monitoring of the Program's food delivery system to prevent fraud, waste and abuse from occurring and to safeguard program benefits.

The Department may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification and overall improvement of the text of the regulation.

Legislative review will be required.

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Summary Sheet
September 8, 2016

__X__ Action

_____ Information

I. SUBJECT: Placement of Thiafentanil into Schedule II for Controlled Substances

II. FACTS: 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. Schedule II substances are listed in Section 44-53-210. 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 by which DHEC can expeditiously designate a substance as a controlled substance if the federal government has so designated.

Section 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 August 26, 2016, its interim final rule placing the substance thiafentanil (4-(methoxycarbonyl)-4-(Nphenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existences of such isomers, esters, ethers and salts is possible, into schedule II of the Controlled Substances Act (CSA), effective immediately. This action is based on a finding by the DEA that the placement of thiafentanil into schedule II of the CSA is necessary because it has a potential for abuse similar to other schedule II substances.
https://www.gpo.gov/fdsys/pkg/FR-2016-08-26/pdf/2016-20463.pdf

III. ANALYSIS: Thiafentanil is a potent opioid and an analogue of fentanyl, a Schedule II substance. On March 23, 2016, the DEA received notice that the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration had approved the use of Thianil (a salt form of thiafentanil) for use in the immobilization of nondomestic, non-food-producing minor species hoofstock and recommended placement of thiafentanil into schedule II of the federal CSA.

When determining whether a substance should be placed into Schedule II of the S.C. Controlled Substances Act, Section 44-53-200 of the S.C. Code of Laws requires the Department place a substance in Schedule II if it meets the following criteria:

(a) It has a high potential for abuse;

(b) It has a currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) Abuse may lead to severe psychic or physical dependence.

According to its interim final rule, the DEA conducted its own review and determined thiafentanil met the criteria for placement in schedule II of the federal CSA because a review of available data showed it had a high potential for abuse, a currently accepted medical use with severe restrictions, and that abuse of thiafentanil may lead to severe psychological or physical dependence.

IV. RECOMMENDATION: As DEA has determined the placement of thiafentanil into schedule II of the federal CSA is necessary, the Department recommends the Board adopt the scheduling of thiafentanil into Schedule II for Controlled Substances in South Carolina and amend S.C. Code Section 44-53-210(c) to include: Thiafentanil.

Submitted by:

Lisa Thomson
Chief, Bureau of Drug Control

Shelly Kelly
Deputy Director for Health Regulations

Attachment: Federal Register Vol. 81, No. 166, Friday, August 26, 2016

■ 10. Amend § 143.23 by revising paragraph (j) and adding paragraph (k) to read as follows:

§ 143.23 Form of entry.

* * * * *

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13, and 148.62 of this chapter), a shipment of merchandise that qualifies for informal entry under 19 U.S.C. 1498 may be entered, including the information listed in paragraph (k) of this section, by presenting the bill of lading or a manifest listing each bill of lading when:

(1) The value of the shipment does not exceed $100 in the case of a bona fide gift from a person in a foreign country to a person in the United States and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter);

(2) The value of the shipment does not exceed $200 in the case of articles (including bona fide gifts) from the Virgin Islands, Guam, and American Samoa and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter); or

(3) The value of the shipment does not exceed $800 and the shipment satisfies the requirements in § 10.151 of this chapter (see §§ 10.151 and 128.24(e) of this chapter).

(k) The following information is required to be filed as a part of entry made under paragraph (j) of this section:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity;

(6) Shipping weight; and

(7) Value.

■ 11. Amend § 143.26 by removing the figure "$200" and adding in its place "$800" in two places each in paragraphs (a) and (b).

PART 145—MAIL IMPORTATIONS

■ 12. The general authority citation for part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

§ 145.31 [Amended]

■ 13. Amend § 145.31 by removing the figure "$200" and adding in its place "$800" in the section heading and text.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: August 23, 2016.

Timothy E. Skud,

Assistant Secretary of the Treasury.

[FR Doc. 2016–20581 Filed 8–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1305, and 1308

[Docket No. DEA–375]

Schedules of Controlled Substances: Placement of Thiafentanil Into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Drug Enforcement Administration is placing the substance thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers as possible, into schedule II of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act, as revised by the Improving Regulatory Transparency for New Medical Therapies Act which was signed into law on November 25, 2015.

DATES: The effective date of this rule is August 26, 2016. Interested persons may file written comments on this rule in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before September 26, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before September 26, 2016.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–375" on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement

Administration (DEA) for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services and Drug Enforcement Administration eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. In accordance with 21 CFR 1308.44(a)–(c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)." 21 CFR 1300.01. Requests for a hearing and notices of participation must conform to the requirements of 21 CFR 1308.44(a) or (b), as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver of an opportunity for a hearing must conform to the requirements of 21 CFR 1308.44(c), including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing are restricted to "(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . . ." Requests for a hearing and waivers of participation in the hearing should be submitted to the DEA on or before the deadline specified above, using the address information provided therein.

Background, Legal Authority, and Basis for This Scheduling Action

Thiafentanil, known chemically as 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine, a potent opioid, is an analogue of fentanyl. The product Thianil (thiafentanil oxalate, a salt form of thiafentanil) was reviewed by the Food and Drug Administration (FDA) to determine whether it meets the requirements for addition to the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (the Index) (21 U.S.C. 360ccc–1) as set forth by the Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act, 2004). The MUMS Act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to allow for the legal marketing of unapproved new animal drugs intended for use in minor species. In a letter from the Department of Health and Human Services (HHS) dated June 20, 2016, the DEA received notification that HHS/FDA added Thianil (thiafentanil oxalate) to the Index under section 572 of the FDCA. In this same notification, HHS/FDA stated that on June 16, 2016, HHS/FDA granted the request for the addition of Thianil to the Index under Minor Species Index File (MIF) 900000. Thianil is indicated for use in the immobilization of non-domestic, non-food-producing minor species hoofstock.

Thiafentanil will be marketed as thiafentanil oxalate, 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidinium oxalate. Thiafentanil should not be confused with thiofentanyl (*N*-phenyl-*N*-(1-(2-(thiophen-2-yl)ethyl)piperidin-4-yl)propionamide), which is currently listed as a controlled schedule I substance.

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), where the DEA receives notification from HHS that the Secretary has indexed a drug under section 572 of the FDCA, the DEA is required to issue an interim final rule controlling the drug not later than 90 days after receiving such notification from HHS. 21 U.S.C. 811(j). Accordingly, the DEA is issuing this interim final rule controlling thiafentanil.

When controlling a drug pursuant to section 811(j), the DEA must apply the scheduling criteria of subsections 811(b), (c), and (d) and section 812(b). 21 U.S.C. 811(j)(3). In accordance with these criteria, the DEA has reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, along with all other relevant data, and completed its own eight-factor review document on thiafentanil pursuant to 21 U.S.C. 811(c). As explained below, based on these considerations, the DEA concludes that thiafentanil meets the criteria for placement in schedule II of the CSA.

On November 28, 2011, the HHS provided the DEA with its initial scientific and medical evaluation and scheduling recommendation regarding thiafentanil. Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of thiafentanil as a new drug, along with the HHS' recommendation to control thiafentanil and its salts under schedule II of the CSA. Subsequently, on March 23, 2016, the HHS provided the DEA with a supplement to its 2011 analysis, which indicated that the HHS/FDA planned to add Thianil (thiafentanil oxalate) to the Index for use in the immobilization of non-domestic, non-food-producing minor species hoofstock and reiterated their recommendation that thiafentanil be placed in schedule II of the CSA. By

letter dated June 20, 2016, the DEA received notification from the HHS that the FDA had granted the request on June 16, 2016, for Thianil (thiafentanil oxalate) to be added to the Index.

Pursuant to 21 U.S.C. 811(j), and based on the HHS recommendation, MUMS Act indication by the HHS/FDA, and the DEA's determination, the DEA finds that thiafentanil has a high potential for abuse, a currently accepted medical use with severe restrictions, and that abuse of thiafentanil may lead to severe psychological or physical dependence. Accordingly, the DEA is issuing this interim final rule to add thiafentanil (4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such, to schedule II of the CSA.

Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its scheduling action. Please note that the DEA and HHS analyses, along with the HHS supplement, are available in their entirety under "Supporting Documents" in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number "DEA–375." Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *The Drug's Actual or Relative Potential for Abuse:* Thiafentanil is a chemical substance that has not been marketed in the United States, however, it is approved and marketed in the Republic of South Africa as a salt form under the brand name Thianil (thiafentanil oxalate). There is no information available which details actual abuse of thiafentanil.

According to the HHS, thiafentanil is a synthetic analogue of fentanyl and is structurally related to other fentanyl-like opioids such as sufentanil (schedule II) and carfentanil (schedule II). It acts as a potent μ-opioid receptor agonist and produces strong morphine-like effects in animals. It is only intended for the immobilization of non-domestic, non-food-producing minor species hoofstock. Thiafentanil has been used in a manner similar to other opioid immobilizing agents such as etorphine hydrochloride (schedule II) and carfentanil (schedule II), which are approved only for veterinary use as animal immobilization agents. The abuse potential of thiafentanil has not been evaluated in humans or in animal behavioral models that are predictors of abuse by humans. Because thiafentanil shares chemical and pharmacological similarities with schedule II fentanyl and its analogues, the abuse potential of thiafentanil is considered similar to that of schedule II opioid substances such as sufentanil and carfentanil.

Pharmacologically, as a potent μ opioid receptor agonist, thiafentanil is slightly less potent than carfentanil, which is 100 times more potent than fentanyl and 10,000 times more potent than morphine. Thiafentanil is a potent fentanyl analogue. Thus, it is reasonable to assume that there will be potentially significant diversion of thiafentanil from legitimate channels by people who have access to it, and that thiafentanil would be used without medical advice, therefore causing substantial hazards to the users or to the safety of the community if not controlled. The chemical and potent opioid-like pharmacological properties of thiafentanil predict that its risk to the public health is likely to be similar to fentanyl (schedule II) and its analogues such as carfentanil (schedule II), sufentanil (schedule II) and alpha-methylfentanyl (schedule I).

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* According to HHS' scientific and medical review, there are no data on the effects of thiafentanil in humans. Thiafentanil's effects in humans are predicted from its effects in animals and its chemical and pharmacological similarity to other schedule II potent opioids such as fentanyl and carfentanil.

The HHS eight-factor review document described a study directly comparing the immobilizing effects of thiafentanil (15 mg) and carfentanil (2 or 4 mg) in elk in which thiafentanil produced a faster immobilization effect (0.7 to 2.2 minutes) than carfentanil. In addition, the elk returned to standing 0.9 to 1.4 minutes faster under the thiafentanil condition. This study appears to support a faster immobilization and recovery time with thiafentanil relative to carfentanil. However, the authors stated that the role of the increased dose of thiafentanil is unknown.

Animal studies described by the HHS demonstrated that the effects of thiafentanil and carfentanil are completely reversed by naltrexone. As a μ-opioid receptor antagonist, naltrexone can reverse the effects of a variety of opioid drugs including thiafentanil and carfentanil. Those studies suggest that thiafentanil possesses a neuro-pharmacological mechanism of action similar to other schedule II opioid drugs with a high abuse potential.

According to HHS' review, Thianil (thiafentanil) is currently approved and registered for use in the Republic of South Africa. Thiafentanil oxalate is suggested as a drug of choice in the capture of exotic and ungulate wildlife species.

3. *The State of Current Scientific Knowledge Regarding Thiafentanil:* The chemical name of free base thiafentanil is 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine. It has a molecular formula of $C_{22}H_{28}N_2O_4S$ and a molecular weight of 416.52 g/mol with a Chemical Abstract Registry Number (CAS) of 101345–60–2. Thiafentanil oxalate is also known as A3080 with a CAS number of 101365–73–5 and has a molecular formula of $C_{24}H_{30}N_2O_8S$ with a molecular weight of 506.57 g/mol. Thiafentanil oxalate is a white crystalline powder with a melting point of 190–192 °C and its salt crystalizes from absolute alcohol. Thiafentanil should not be confused with thiofentanyl (*N*-phenyl-*N*-(1-(2-(thiophen-2-yl)ethyl)piperidin-4-yl)propionamide), which is currently listed as a schedule I substance.

4. *Its History and Current Pattern of Abuse:* According to the HHS' review, there are no reports of actual abuse and misuse of thiafentanil. This may be due to the limited use of thiafentanil as an immobilizing agent by trained veterinarians.

Current data from the National Forensic Laboratory System (NFLIS),[1] the System to Retrieve Information from Drug Evidence (STRIDE),[2] and the STARLiMS databases show that there is no evidence of law enforcement encounters of thiafentanil in the United States. However, thiafentanil's pharmacological and structural properties suggest that its pattern of abuse would be similar to other potent

[1] The National Forensic Laboratory System (NFLIS) is a program of the DEA, Office of Diversion Control. NFLIS systematically collects drug identification results and associated information from drug cases submitted to and analyzed by State and local forensic laboratories. NFLIS represents an important resource in monitoring illicit drug abuse and trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle approximately 90% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

[2] The System to Retrieve Information from Drug Evidence (STRIDE) is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other federal agencies, and local law enforcement agencies. Reporting via STRIDE ceased on September 30, 2014. STRIDE was succeeded by STARLiMS.

schedule II μ-opioid receptor agonists such as fentanyl and carfentanil.

5. *The Scope, Duration, and Significance of Abuse:* An assessment of the scope, duration, and significance of thiafentanil abuse is not available since it has only been used in a limited market. However, as stated in the HHS review, the structural and pharmacological properties of thiafentanil suggest that it could lead to an abuse pattern with a scope, duration, and significance of abuse similar to that observed with other opioid drugs and opioid analogues if it were marketed in a non-controlled status or were the subject of clandestine synthesis. The HHS and DEA note that thiafentanil is not known to be or to have been the subject of abuse in the United States.

6. *What, if any, Risk There is to the Public Health:* The HHS review indicates that thiafentanil presents a significant risk to the public health and, in this vein, that thiafentanil should only be used in certain animals for very limited purposes and with extreme caution. Based on the review of the structural and pharmacological properties of thiafentanil, the HHS concluded that the abuse of thiafentanil is likely to pose a similar risk to public health as that of other potent opioid drugs such as sufentanil (schedule II), fentanyl (schedule II), carfentanil (schedule II) and clandestinely synthesized alpha-methylfentanyl (schedule I). Thus, inappropriate use of thiafentanil poses a high risk to the public health. Among other things, HHS noted that as a fentanyl derivative, and assuming that thiafentanil can be aerosolized, the use of thiafentanil presents a significant risk to the public health.

HHS described that thiafentanil's labeling indicates that it is solely intended for use by zoologic, wildlife, or exotic animal veterinarians or field biologists who have received training and are supervised by veterinarians. The sponsor recommends the use of handling protocols similar to those in place for other scheduled potent opioids such as carfentanil. HHS further indicated that thiafentanil should be handled in teams consisting of at least two individuals knowledgeable about the hazards of working with potent μ-opioid agonist substances. Personal protective equipment such as latex gloves and protective eyewear should be used and syringes must be disposed of properly. If exposure to thiafentanil occurs in a remote or distant environment, veterinary naltrexone is recommended for use as a reversal agent. The label information will further state that thiafentanil must never be used unless an adequate amount of reversal agent (naltrexone hydrochloride) is immediately available.

HHS also describes the risk of thiafentanil intoxication upon ingestion of animals immobilized with thiafentanil. The label information states that thiafentanil is not intended for human or animal consumption or in non-food producing minor species that become eligible for consumption by humans or food-producing animals. Because thiafentanil, similar to carfentanil, etorphine hydrochloride and diprenorphine, is a potent μ-opioid receptor agonist, it will be subject to specialized handling, distribution and storage procedures similar to those applicable for carfentanil, etorphine hydrochloride and diprenorphine as set forth in 21 CFR parts 1301 and 1305. As a result, this interim final rule revises 21 CFR 1301.74(g), 1301.75(e), 1305.07 introductory text and paragraph (a), and 1305.17(d) to include "thiafentanil."

7. *Its Psychic or Physiological Dependence Liability:* HHS' review states that the structural and pharmacological properties of thiafentanil suggest that it possesses a psychic and physiological dependence liability that is similar to other schedule II related μ-opioid receptor agonist drugs such as sufentanil, fentanyl and carfentanil.

As cited by the HHS review, a double-blind abuse liability study examining intravenous fentanyl, buprenorphine, heroin, morphine, and oxycodone in methadone-maintained patients reported that fentanyl produced subjective effects similar to heroin (schedule I) on several outcome measures indicating that the two drugs produce similar subjective effects. It also demonstrates the psychic dependence liability of fentanyl, and thiafentanil is expected to produce effects similar to fentanyl and to present a similar risk of psychic and physiological dependence. There has been a major increase in abuse of opioids analgesics in the United States (HHS review document, 2011; Compton and Volkow, 2006). Thiafentanil, similar to these opioid analgesics, presents a risk of severe psychic and physiological dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* Thiafentanil is not considered an immediate precursor of any controlled substance.

Determination of Appropriate Schedule

The CSA lists the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(2), finds that:

1. Thiafentanil has a high potential for abuse. Based on its structural and pharmacological properties, thiafentanil has an abuse potential that is comparable to other schedule II opioid drugs such as fentanyl, carfentanil, and sufentanil;

2. FDA determined that Thianil (thiafentanil oxalate) meets the requirements for addition to the Index as set forth by the MUMS Act, 2004 and accordingly added Thianil (thiafentanil oxalate) to the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (the Index) under section 572 of the Federal Food, Drug, and Cosmetic Act. Thianil (thiafentanil oxalate) will be legally marketed in the United States and will have an accepted medical use with severe restrictions; [3] and

3. Due to the chemical and pharmacological similarities of thiafentanil to other schedule II fentanyl derivatives, abuse of thiafentanil may lead to severe psychological or physical dependence.

Based on these findings, the Acting Administrator of the DEA concludes that thiafentanil, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existences of such isomers, esters, ethers, and salts is possible warrants control in schedule II of the CSA. 21 U.S.C. 812(b)(2).

Requirements for Handling Thiafentanil

Thiafentanil is subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional

[3] According to the HHS analysis, "[u]se of a new animal indexed drug is subject to significant restrictions. For example, use of an indexed new animal drug for minor species is limited to a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food producing animals. 21 U.S.C. § 360ccc–l(a)(1). The requester must label, distribute, and promote the new animal drug in accordance with the Index entry, and the FDA may remove a new animal drug from the Index if the conditions and limitations of use have not been followed. 21 U.S.C. 360ccc–l(d)(l)(G); (f)(l)(F). The labeling of an indexed new animal drug must prominently state that the extra-label use of the product is prohibited. 21 U.S.C. 360ccc–l(h). Such restrictions are not imposed upon approved human or animal drugs."

activities and chemical analysis with, and possession involving schedule II substances, including the following:

1. *Registration.* Any person who desires to handle thiafentanil (manufacture, distribute, reverse distribute, dispense, import, export, engage in research, or conduct instructional activities or chemical analysis with, or possess), must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Quota.* Only registered manufacturers are permitted to manufacture thiafentanil in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. *Disposal of stocks.* Upon obtaining a schedule II registration to handle thiafentanil, and if subsequently, any person who does not desire or is not able to maintain a schedule II registration must surrender all quantities of currently held thiafentanil, or may transfer all quantities of currently held thiafentanil to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

4. *Security.* Thiafentanil is subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823, and in accordance with 21 CFR 1301.71–1301.93.

5. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of thiafentanil must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302. In addition, thiafentanil is subject to additional labeling requirements provided by FDA. Thiafentanil must be labeled, distributed, and promoted in accordance with the Index entry of the new animal drug and the FDA may remove a new animal drug from the Index if the conditions and limitations of use have not been followed. 21 U.S.C. 360ccc–l(d)(l)(G); (f)(l)(F). The labeling of an indexed new animal drug must prominently state that the extra-label use of the product is prohibited. 21 U.S.C. 360ccc–l(h).

6. *Inventory.* Every DEA registrant who desires to possess any quantity of thiafentanil must take an inventory of thiafentanil on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with the DEA to handle thiafentanil must take an initial inventory of all stocks of controlled substances (including thiafentanil) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including thiafentanil) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for thiafentanil, or products containing thiafentanil, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. *Orders for thiafentanil.* Every DEA registrant who distributes thiafentanil is required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Prescriptions and other dispensing.* All prescriptions for thiafentanil or products containing thiafentanil must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C. Moreover, given that thiafentanil is not the subject of an approved new drug application under the FDCA, and that it is only allowed under the MUMS Act amendments to the FDCA to be marketed for extremely limited use in minor species, DEA would not consider any dispensing of thiafentanil for human use to be for a legitimate medical purpose within the meaning of the CSA. Likewise, DEA would not consider any dispensing of thiafentanil for animal use beyond the scope of the drug's labeling authorized under the MUMS Act amendments to the FDCA to be for a legitimate medical purpose within the meaning of the CSA.

10. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of thiafentanil may only be for the legitimate purposes consistent with the drug's labeling authorized under the MUMS Act, or for research activities authorized by the FDCA and CSA.

11. *Importation and Exportation.* All importation and exportation of thiafentanil must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving thiafentanil not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Public Law 114–89 was signed into law, amending 21 U.S.C. 811. This amendment provides that in cases where a new drug is (1) approved or indexed by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, the DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause. Therefore, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with Public Law 114–89, this scheduling action is subject to formal rulemaking procedures performed "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), "[w]henever an agency is required by [5 U.S.C. 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis." As noted in the above discussion regarding applicability of the Administrative Procedure Act, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action. Consequently, the RFA does not apply to this interim final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, the DEA has determined and certifies that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year." Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1305

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR parts 1301, 1305 and 1308 as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958, 965.

■ 2. In § 1301.74, revise paragraph (g) to read as follows:

§ 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.

* * * * *

(g) Before the initial distribution of thiafentanil, carfentanil, etorphine hydrochloride and/or diprenorphine to any person, the registrant must verify that the person is authorized to handle the substance(s) by contacting the Drug Enforcement Administration.

* * * * *

■ 3. In § 1301.75, revise paragraph (e) to read as follows:

§ 1301.75 Physical security controls for practitioners.

* * * * *

(e) Thiafentanil, carfentanil, etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

■ 4. The authority citation for 21 CFR part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

■ 5. In § 1305.07, revise the introductory text and paragraph (a) to read as follows:

§ 1305.07 Special procedure for filling certain orders.

A supplier of thiafentanil, carfentanil, etorphine hydrochloride, or diprenorphine, if he or she determines that the purchaser is a veterinarian engaged in zoo and exotic animal practice, wildlife management programs, or research, and is authorized by the Administrator to handle these substances, may fill the order in accordance with the procedures set forth in § 1305.17 except that:

(a) A DEA Form 222 or an electronic order for thiafentanil, carfentanil, etorphine hydrochloride, and diprenorphine must contain only these substances in reasonable quantities.

* * * * *

■ 6. In § 1305.17, revise paragraph (d) to read as follows:

§ 1305.17 Preservation of DEA Forms 222.

* * * * *

(d) The supplier of thiafentanil, carfentanil, etorphine hydrochloride, and diprenorphine must maintain DEA Forms 222 for these substances separately from all other DEA Forms 222 and records required to be maintained by the registrant.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 7. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 8. In § 1308.12, add paragraph (c)(29) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(29) Thiafentanil	9729

* * * * *

Dated: August 18, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–20463 Filed 8–25–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[Docket ID: DOD–2013–OS–0133]

RIN 0790–ZA11

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is interpreting its regulation implementing the Military Lending Act (the MLA). The MLA as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on ''consumer credit'' extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). This interpretive rule provides guidance on certain questions the Department has received regarding compliance with the July 2015 Final Rule.

DATES: *Effective Date:* August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571–372–5357.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July, 2015, the Department of Defense (Department) issued a final rule [1] (the July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA) [2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as ''consumer credit.'' [3] Moreover, among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a ''covered borrower,'' modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. The Department is issuing this interpretive rule to inform the public of its views. The Department has chosen to provide this guidance in the form of a question and answer document to assist industry in complying with the July 2015 Final Rule. This interpretive rule does not substantively change the regulation implementing the MLA, but rather merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p); TILA refers to the Truth in Lending Act (codified at 15 U.S.C. 1601 *et seq.*); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in 32 CFR 232.3(s); DMDC refers to the Defense Manpower Data Center.

1. What types of overdraft products are within the scope of 32 CFR 232.3(f) defining ''consumer credit''?

Answer: The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered ''consumer credit'' for purposes of the MLA.[4] Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products.

The MLA regulation defines ''consumer credit'' as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four installments, with some exceptions. The exceptions include: Residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under 12 CFR 1026.29); and credit extended to non-covered borrowers consistent with 32 CFR 232.5(b). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

> As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[5]

The MLA regulation also defines ''closed-end credit'' and ''open-end credit'' with express references to the definitions of the same terms in Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services.[6] It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: It is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit

[1] 80 FR 435560.

[2] 10 U.S.C. 987.

[3] 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

[4] The Department notes that the Consumer Financial Protection Bureau may from time to time revise Regulation Z. *See, e.g.*, 79 FR 77102 (Dec. 23, 2014) (proposing to revise the definition of finance charge with respect to charges imposed in connection with certain credit features offered in conjunction with prepaid card accounts). It is the Department's intention that this part should wherever possible be interpreted consistently with Regulation Z as it evolves in order to harmonize the two regulations and thereby minimize compliance burden.

[5] 80 FR 43563 (footnotes omitted).

[6] 80 FR 43579–43580.

Board:
Allen Amsler, *Chairman*
Mark S. Lutz, *Vice Chairman*
Ann B. Kirol, DDS, *Secretary*
R. Kenyon Wells
Charles M. Joye II, P.E.
L. Clarence Batts, Jr.
David W. Gillespie, MD
William Lee Hewitt, III

Meeting Dates for 2017*

Thursday, January 12
Thursday, February 9
Thursday, March 9
Thursday, April 13
Thursday, May 11
Thursday, June 8
Thursday, July 13
Thursday, August 10
Thursday, September 7 (1st Thursday)
Thursday, October 12
Thursday, November 9
Thursday, December 7 (1st Thursday)

*Meetings are scheduled for 10:00 am in the Board Room of the S.C. Department of Health and Environmental Control. Date, time or locations may change if necessary. Public notice will be given.

Approved this 8th day of September 2016.

_____

Allen Amsler, Chairman
S.C. Board of Health and Environmental Control

South Carolina Board of Health and Environmental Control
Final Review Conference
September 8, 2016

Final Review Conference Docket No. 16-RFR-60, Removal of Wave Dissipation System

Requests for Final Review were filed on July 21, 2016.

Counsel of Record –
Bradley D. Churdar for SCDHEC
Matthew D. Hamrick for SI Seawalls and Fencing, et al.
Newman Jackson Smith for Seascape Villas Horizontal Property Regime
Butch Bowers for Ocean Club Horizontal Property Regime
Daniel S. Slotchiver for Carole Slotchiver
Mary D. Shahid for Michael and Rosemary Safdi, Michael and Mary Ricci, Hasmuka P. Rama, Philip Derrick Hampton and Travis E. Hampton, William and Nancy Longfield, Patricia R. Gardner, Paul J. Conway, Kathryn V. Balazs, Ruth Ann Skinner, JB Beachwood, LLC

Table of Contents

Note: Page #s for this record are located on the bottom right hand corner of the page.

Additional Wave Dissipation System Study Information for Final Review Conference - Docket No. 16-RFR-60, End of Wave Dissipation System Study Period and Removal Notification for Isle of Palms, Harbor Island and Beachwood East.

- The Wave Dissipation System (WDS) is an experimental device intended to reduce wave energy and erosive effects on the beach while also protecting landward property. The WDS was independently designed and academically sponsored by the Citadel for research as an alternative to sandbags that would be employed only in emergency situations as a means of temporary protection. The purpose of the academic study is to determine the performance of the WDS under various environmental conditions and the resulting effects on the public beach.

- This study, sponsored by the Citadel, was exempt from the Department's permit requirements as "research activities of State agencies and educational institutions" under S.C. Code Ann. §48-39-130 (D)(2) and S.C. Code Ann. Regulation § 30-5(A)(2) . Further, the study was established by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act and, subsequently modified by Budget Proviso 34.48 of the 2015-2016 General Appropriations Act (See Initial Staff Response, Section II, Part C).

- The Department acknowledged, with conditions, the installation of the WDS on an experimental basis. The acknowledgement included conditions to ensure that necessary study data is obtained so the Department can determine if the WDS could be used as an alternative under the emergency order provision.

- At the onset of the study, DHEC limited the duration of the study to one year from WDS installation. This condition, along with all other conditions in the Department's acknowledgement, was accepted by the Citadel prior to the installation of WDS devices at the four study locations. Neither the Budget Provisos nor the agreement between DHEC and the Citadel allow the structures to remain in place indefinitely or permanently.

- SCDHEC-OCRM has contracted with an independent engineer to provide an objective evaluation and assessment of the WDS installations. This evaluation is currently underway and the study findings are due to the Department in October. These results, along with the study results from the Citadel and the DHEC staff evaluation, will be presented to the DHEC Board in late fall 2016. **Until all study data has been received and evaluated, the efficacy of the WDS cannot be determined, nor can the design be assessed for compliance with the criteria set forth in Budget Proviso 34.48 for a "qualified wave dissipation device".**

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Requestor(s):

A. SI Seawalls and Fencing systems, LLC and Wave Dissipation Systems, LLC; RFR dated July 20, 2016

B. Seascape Villas Horizontal Property Regime, Inc.; RFR dated July 20, 2016

C. Carole L. Slotchiver, 12 Beachwood East property owner; RFR dated July 20, 2016

D. Wild Dunes Ocean Club Horizontal Property Regime; RFR dated July 21, 2016

E. Harbor Island property owners; RFR's dated July 21, 2016:
Michael G. and Mary M. Ricci (116 Harbor Drive N.),
Patricia R. Gardner (122 Harbor Drive N),
Phillip Derrick Hampton and Travis E. Hampton (130 Harbor Drive N)

F. Beachwood East property owners; RFR's dated July 21, 2016:
Paul Conway (11 Beachwood East),
JB Beachwood LLC (13 Beachwood East),
Kathyrn V. Balazs (14 Beachwood East),
Ruth Ann Skinner Marital Trust (15 Beachwood East),
William H. and Nancy Longfield (16 Beachwood East),
Michael A. and Rosemary G. Safdi (17 Beachwood East), and
Hasmuku P. Rama (19 Beachwood East)

RECEIVED
AUG 17 2016
Clerk, Board of Health and Environmental Control

Docket No.: 16-RFR-28 – On July 8, 2016, the Department issued a letter notifying the Citadel the year long study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) would end on July 28, 2016 and that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period. Exhibit A.

OGC No.: 22737

I. Summary

a. Type of Decision

The Department of Health and Environmental Control administers the Critical Area Permitting Program pursuant to the Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10 et seq. and the Critical Area Permitting Regulations, S.C. Code Ann. Regulation § 30-1 et seq. Applicants that propose activities which will alter the state's critical area are required to obtain a Critical Area Permit pursuant S.C. Code Ann. § 48-39-130(C). Permit applications are reviewed on a case-by-case basis and pursuant to the ten general considerations, further guidelines and respective specific project standards.

Additionally, the Department acknowledges exceptions to a permit under S.C. Code Ann. § 48-39-130 (D)(2).

b. Description of Department Action
On July 8, 2016, the Department issued a letter notifying the Citadel the year long study of the WDS authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) would end on July 28, 2016 and that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period. Exhibit A.

c. Parties
The Department issued the July 8, 2016 letter to the Citadel requiring the removal of the WDS.

The Requestor(s) for this RFR are Harbor Island property owners: Michael G. and Mary M. Ricci, Patricia R. Gardner, Phillip Derrick Hampton and Travis E. Hampton. Beachwood East property owners: Paul Conway, JB Beachwood LLC, Kathyrn V. Balazs, William H. and Nancy Longfield, Michael A. and Rosemary G. Safdi, Hasmuku P. Rama and Ruth Ann Skinner Marital Trust, all represented by Mary D. Shahid, Esq.

SI Seawalls and Fencing Systems, LLC and Wave Dissipation Systems, LLC represented by Matthew Hamrick, Esq.

Seascape Villas Horizontal Property Regime, Inc. represented by Jack Smith, Esq.

Wild Dunes Ocean Club Horizontal Property Regime represented by Butch Bowers, Esq.

d. Location
Four WDS structures were installed under the pilot study at two beachfront communities, Harbor Island SC and Isle of Palms, SC. Specifically, the WDS was installed in front of four properties on Harbor Island identified as 116, 122 and 130 Harbor Drive N, St. Helena Island SC 29920. The WDS was installed at properties on the Isle of Palms identified as 11, 13, 14, 15, 16, 17, and 19 Beachwood East, Isle of Palms, SC, 29451. There are two additional study locations on the Isle of Palms identified as Seascape Villas Horizontal Property Regime, Inc. Isle of Palms, SC and Wild Dunes Ocean Club Horizontal Property Regime, Isle of Palms, SC. (Exhibit B).

e. Relevant Chronology
The chronology shows the Department conducted a thorough review of the Citadel's proposed pilot study and was responsive to specific inquiries and public participation.

March 25, 2015 – Dr. Tim Mays submitted a formal request from the Citadel's Department of Civil and Environmental Engineering to perform a study of the Wave

Dissipation Device at Ocean Club Villas in the Wild Dunes community, Isle of Palms, SC pursuant to Regulation 30-5(A)(2). Exhibit C.

April 17, 2015 – The Department acknowledged the proposed research project at Ocean Club Villas in the Wild Dunes community, Isle of Palms, SC met the "research activities of a State educational institution" exception pursuant to S.C. Code Ann. Regulation § 30-5(A)(2) and would not require a direct critical area permit provided conditions were met. Exhibit C.

April 7, 2015 – Dr. Tim Mays submitted a formal request from the Citadel's Department of Civil and Environmental Engineering to perform a study of the Wave Dissipation Device at Harbor Island, St. Helena, SC pursuant to S.C. Code Ann. Regulation § 30-5(A)(2). Exhibit C.

May 4, 2015 - The Department acknowledged the proposed research project at Harbor Island met the "research activities of a State educational institution" exception pursuant to S.C. Code Ann. Regulation § 30-5(A)(2) and would not require a direct critical area permit provided conditions were met. Exhibit C.

May 6, 2015 – Dr. Tim Mays submitted a formal request from the Citadel's Department of Civil and Environmental Engineering to perform a study of the Wave Dissipation Device at Beachwood East, Isle of Palms, SC pursuant to S.C. Code Ann. Regulation § 30-5(A)(2). Exhibit C.

June 2, 2015 - The Department acknowledged the proposed research project at Beachwood East, Isle of Palms, SC met the "research activities of a State educational institution" exception pursuant to S.C. Code Ann. Regulation § 30-5(A)(2) and would not require a direct critical area permit provided conditions were met. Exhibit C.

September 22, 2015 - Dr. Tim Mays submitted a formal request from the Citadel's Department of Civil and Environmental Engineering to perform a study of the Wave Dissipation Device at Seascape Villas in the Wild Dunes Community, Isle of Palms, SC pursuant to S.C. Code Ann. Regulation § 30-5(A)(2). Exhibit C.

November 12, 2015 - The Department acknowledged the proposed research project at Seascape Villas in the Wild Dunes Community, Isle of Palms, SC met the "research activities of a State educational institution" exception pursuant to S.C. Code Ann. Regulation § 30-5(A)(2) and would not require a direct critical area permit provided conditions were met. Exhibit C.

June 15, 2016 – The South Carolina Environmental Law Project submitted a letter to the Department stating the Department has violated the taking prohibition of the Endangered Species Act, 16 U.S.C.§1538(a)(1)(**b**) and provided a 60 day notice of intent to sue under said Act. Exhibit D.

June 22, 2016 – The Department sent a letter to the South Carolina Department of Natural Resources requesting the agency's guidance, as the State's authority on endangered species, as to whether the interactions between sea turtle species protected under the Endangered Species Act and the Wave Dissipation Device demonstrate material harm to the species. Exhibit E.

June 27, 2016 – The South Carolina Department of Natural Resources submitted a letter to the Department in response to the Department's June 22, 2016 request. Exhibit E.

July 8, 2016 – The Department issued a letter notifying the Citadel the year long study of the WDS authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) would end on July 28, 2016 and that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period. Exhibit A.

July 20, 2016 - The Department received a request for final review (RFR) from Matthew D. Hamrick, Esq. of Kernodle Coleman, counsel for SI Seawalls and Fencing Systems, LLC and Wave Dissipation Systems, LLC. The request challenges staff's decision to require all Wave Dissipation Systems be removed from the four locations at Harbor Island, and Isle of Palms, South Carolina by the end of the study period, July 28, 2016. Exhibit F.

July 20, 2016 - The Department received an RFR from Daniel S. Slotchiver, Esq. of Slotchiver and Slotchiver, L.L.P, counsel for Carole L. Slotchiver, 12 Beachwood East property owner. The request challenges staff's decision to require removal of the Wave Dissipation Systems from Beachwood East, Isle of Palms, South Carolina by the end of the study period, July 28, 2016. Exhibit G.

July 20, 2016 - The Department received an RFR from Jack Smith, Esq. of Nelson Mullins, counsel for Seascape Villas Horizontal Property Regime, Inc. The request challenges staff's decision to require removal of the Wave Dissipation Systems from Seascape Villas, Isle of Palms, South Carolina by the end of the study period, July 28, 2016. Exhibit H.

July 21, 2016 - The Department received an RFR from Mary D. Shahid, Esq. of Nexsen Pruet, counsel for the aforementioned residents of Harbor Island and Isle of Palms. The request challenges staff's decision to require removal of the Wave Dissipation Systems from Beachwood East, Isle of Palms, South Carolina and from Harbor Island, Beaufort County, South Carolina by the end of the study period, July 28, 2016. Exhibit I.

July 21, 2016 - The Department received an RFR from Butch Bowers, Esq. of Bowers Law Office, LLC, counsel for Wild Dunes Ocean Club Horizontal Property Regime. The request challenges staff's decision to require removal of the Wave Dissipation

Systems from Ocean Club, Isle of Palms, South Carolina by the end of the study period, July 28, 2016. Exhibit J.

f. Decision

On July 8, 2016, the Department issued a letter notifying the Citadel the year long study of the WDS authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) would end on July 28, 2016 and that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

II. Relevant Law

a. Statute

S.C. Code Ann. § 48-39-130(D)(2) provides, (D) It shall not be necessary to apply for a permit for the following activities: (2) Hunting, erecting duckblinds, fishing, shellfishing and trapping when and where otherwise permitted by law; the conservation, replenishment and research activities of state agencies and educational institutions or boating or other recreation provided that such activities cause no material harm to the flora, fauna, physical or aesthetic resources of the area.

S.C. Code Ann. § 48-39-320(C) provides, "(C) Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area. If success is demonstrated, the board, or the Office of Ocean and Coastal Resource Management, may allow the continued use of the technology, methodology, or structure used in the pilot project location and additional locations."

b. Regulations

S.C. Code Ann. Regulation § 30-5(A)(2): Exceptions (to permitting requirement). Provides that (2) Hunting, erecting duckblinds, fishing, shellfishing and trapping when and where otherwise permitted by law; the conservation, replenishment and research activities of State agencies and educational institutions; or boating or other recreation provided that such activities cause no material harm to the flora, fauna, physical, or aesthetic resources of the area.

c. Budget Proviso

Budget Proviso 34.51 of the 2014-2015 General Appropriations Act

(DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2).

Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

Budget Proviso 34.48 of the 2015-2106 General Appropriations Act

(DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;
(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
(4) **the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;**
(5) does not negatively impact or inhibit sea turtle nesting or other fauna;
(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

III. Jurisdictional Issues

None (Reserved)

IV. Response to each Ground(s) Stated in Request for Review.

Please note that:

1) Mary Shahid's RFR letters for all her clients are identical and Mr. Slotchiver's RFR letter is identical to Mary Shahid's. Therefore, staff's response will address both Mrs. Shahid and Mr. Slotchiver's grounds in the same response.

2) Mr. Bower's RFR letter is identical to Mr. Smith's RFR letter. Therefore, staff's response will address both Mr. Bower's and Mr. Smith's grounds in the same response.

3) Mr. Hamrick's RFR letter does not establish a basis for review but states his client's "hereby join in all arguments set forth in the Requests for Final Review filed by" Seascape Villas Regime, Wild Dunes Ocean Club Regime, Mrs. Slotchiver and Mary Shahid's Client's. There will be no specific response to Mr. Hamrick's RFR since he provided no grounds for review. Please allow staff's responses below to also serve as responses to Mr. Hamrick's RFR.

Mary Shahid, Esq. (on behalf of Requestors of Harbor Island and Beachwood East) and Daniel Slotchiver (on behalf of Carole Slotchiver) states: "While the Budget Proviso authorizes the Department to order removal of all or any portion of the WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area." Counsel for the Requestors further assert that "there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtle as the basis for the order."

"Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding the continued use of the WDS."

Staff Response:

As background, the WDS pilot study is acknowledged by the Department under Budget Provisos 34.51 and 34.48 of the General Appropriations Act. Specifically, S.C. Code Ann. §48-39-130 (D)(2) and S.C. Code Ann. Regulation § 30-5(A)(2) allow the Department to acknowledge research activities of State agencies and educational institutions provided that such activities cause no material harm to the flora, fauna, physical, or aesthetic resources of the area as an exception to a permit.

The Citadel formally requested to conduct WDS studies at Harbor Island and at the Isle of Palms. The purpose of the studies is to determine and subsequently describe the performance of the WDS under extreme loading that is imminent as the beach continues to lower and the adjacent scarp line continues to retreat. As this is a pilot study, impacts to flora, fauna, physical or aesthetic resources are unknown until the study is implemented. Thus, the Department formally acknowledged each WDS study under S.C. Code Ann. Regulation § 30-5(A)(2) provided certain conditions were met which would help the Department determine whether or not the system would be qualified to be used as a temporary measure under an emergency situation. Specifically, condition number 2 of each acknowledgement stated the intended duration of the WDS study at "the Sites" must not exceed one year from the date installation starts and research data must be submitted to the Department quarterly for the duration of the project. The Citadel, as the entity responsible for the studies, is aware of and accepted as a condition by the Department that each study would end one year from the date installation begins. Furthermore, neither the Budget Provisos nor the agreement between the Department and the Citadel allow the WDS structure to remain in place permanently as the WDS is meant to be a temporary structure to be used in the Citadel's pilot study. While the Department had stated in an email that the WDS structures could remain in place at the conclusion of the current studies (provided the properties are still in an emergency situation up to the time of the final Board review and decision), the potential impact to sea turtles under the Endangered Species Act heightened the Department's concerns associated with the WDS and because the one year pilot study ended on July 28, 2016, the Department determined this concern warranted removal of the WDS structure by that date rather than waiting for the final Board review and decision.[1]

[1] Although the South Carolina Department of Natural Resources' (SCDNR) letter did not state the WDS has directly created a material harm to sea turtles, the letter does state the WDS creates a "potential harm associated with continued nesting attempts."

Jack Smith (on behalf of Requestors Seascape Villas) and Butch Bowers (on behalf of Ocean Club Villas) states the following: 1) staff's decision should be reversed because the decision is arbitrary, capricious, and an abuse of discretion; and 2) staff's decision should be reversed on the basis of estoppel.

1) **Staff's decision subject to this request is arbitrary, capricious and an abuse of discretion. Specifically requestor states there is no basis for the removal under the Proviso, nor under the applicable state statute allowing activities without a permit found at S.C. Code Ann. §48-39-130(D)(2). The only basis that can be found in the Proviso for removal of all or any portion of a qualified WDS is by a determination that it "causes a material harm to the flora, fauna, physical or aesthetic resources of the area" under the above-cited code section.**

   In addition, requestor states staff's decision is also arbitrary and capricious in that it states that the study will end on July 28, 2016 when there is no legislative or regulatory basis for the study to end, and significantly nor basis for the WDS to be removed at the end of the study. The Proviso, with S.C. Code Ann§ 48-39-320(C), allow the installation of the WDS without a permit. An arbitrarily imposed condition on the time for the study or continuation of use of the WDS without any report or evaluation of any data is outside the authority of OCRM. Only a finding of material harm as legislated can be the basis for ending the study and removal of the WDS, pending a review of the study results.

   Staff Response: see below.

2) **Requestor states staff decision should be reversed on the basis of estoppel because staff informed the Citadel that "the current WDS installation will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision." Both Requestors assert that because they relied upon the staff statement about when removal may be required, they (Ocean Club and Seascape) have not yet made a request for any replacement protection. Both Requestors assert that their property would be damaged and at risk from king tides and storms with no protection. Accordingly, "OCRM must be stopped from requiring the removal of the WDS."**

   Staff Response:

Please allow this response to serve as the response for both of the above-referenced challenges.

Rather than repeating the staff response to challenges from Mary Shahid, Esquire and Daniel Slotchiver, Esquire, the Department incorporates that response by reference.

Addressing Ocean Club and Seascape's allegations that the Department's July 8, 2016 removal notification decision was arbitrary and capricious, the Requestors must show that the Department's application of the Provisos in making this decision to require removal of the WDS on July 28, 2016 "... does not fall within the range of permissible decisions applicable [to this] ... particular case." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (Sup. Ct. 2006) (citing Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (Sup. Ct. 1987); S.E.C. v. TheStreet.Com, 273 F.3d 222, 229 n. 6 (2d Cir. 2001). Stated another way, the court "must consider whether the decision was based on a clear consideration of the relevant factors and whether there has been a clear error of judgment." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). The Department believes that its decision to require the Citadel to remove the WDS when the pilot study ended was not a clear error of judgment as the U.S. Supreme Court required in their Overton Park decision. Rather, in view of the fact that the WDS would never have been placed on the beach, but for the Citadel's pilot study, requiring removal of the WDS at the end of the study period is a rational and logical decision that falls "within the range of permissible decisions applicable [to this] ... particular case." Allen at 88. As such, by our Supreme Court's standards, this was not an arbitrary and capricious decision.

Ocean Club and Seascape both assert that "the only basis that can be found in the Proviso for removal of all or any portion of a qualified WDS is by a determination that it 'causes a material harm to the flora, fauna, physical or aesthetic resources of the area' under the above-cited code section." Taking this statement to its logical conclusion, if such a "material harm" determination is not made, then the WDS would stay on the beach indefinitely, despite the fact that the pilot study period is concluded and the WDS is an unpermitted structure in the critical area. Such a result would contradict the policies of the Act and the intention that the system would be used as a temporary measure under emergency conditions.

Regarding Ocean Club and Seascape's estoppel arguments, to prevail they must prove that they have changed their position to their detriment in reliance upon the Department's email. Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006). Both Requestors assert that there is no time for them (Ocean Club and Seascape) "to request and obtain an emergency order for sand bags, also an expensive replacement for the WDS; there is no guarantee that an emergency order for sandbags would be issued." These Requestors were notified on the same date the WDS removal notification letter was sent that the Department would "work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an emergency order so that these efforts are undertaken to minimize additional impact to your property." The Requestors failed to submit requests for emergency orders to the Department. Having failed to undertake this measure to protect their property, they cannot now reasonably assert that they have been harmed because they have "no protection." The Department is very responsive to requests for emergency orders for sand bags. Typically, the Department will review and issue such emergency orders within days of receipt of such a request.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter.

Respectfully Submitted,

Blair N. Williams
Manager, Wetland Section
Office of Ocean & Coastal Resource Management

Bradley D. Churdar
Associate General Counsel
Office of Ocean & Coastal Resource Management

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Wave Dissipation System Study Period and Removal Notification

Dear Dr. Mays,

As you are aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is providing notice that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

Please proceed with ensuring the removal of all WDS installations at Harbor Island and Isle of Palms (Ocean Club Villas, Seascape Villas, and Beachwood East) by July 28, 2016. This includes all horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS. The vertical pilings and casings cannot remain in the beach system independent of the horizontal panels as they pose a potential safety hazard to the public using the beach. Please document to the Department when removal activities will commence at each location, and again once the structures have been removed.

Coordination with the local turtle Nest Protection Project Leader (NPPL) is required each day prior to and during any removal work. This coordination is necessary to ensure that no new turtle nests are present in the area that may be impacted by removal activities. Please ensure that the NPPL has documented the presence or absence of nesting activity daily and provide that information to the Department. The NPPL for Isle of Palms is Mary Pringle, and she can be reached at 843-886-8733 (home) or 843-697-8733 (cell). The NPPL for Harbor Island is Fran Nolan, and she can be reached at 843-838-4878 (home) or 843-238-6256 (cell).

The Department has notified property owners with WDS installation of the removal requirements and provided information for obtaining emergency orders (EO) for temporary protection of their habitable structures. We will work closely with your research team and the property owners to coordinate the removal of the WDS and completion of any measures approved under an EO.

The Citadel's final report from the pilot study is due to the Department by August 28, 2016. The final report should document your observations and findings for each of the four WDS installations. As you are aware, the Department has also contracted with an independent coastal engineering professional to evaluate the project. Conclusions from both reports will be presented to the Department's Board in late fall 2016.

Please feel free to contact me or Blair Williams at (843) 953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256
dinovorg@dhec.sc.gov

cc: Elizabeth von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM


Charleston
Isle of Palms
Atlantic Ocean
Edisto
Harbor Island
Exhibit B

Exhibit B
Beachwood East WDS study location

Exhibit B
Beachwood East
WDS study location

Exhibit B
Beachwood East
WDS study location

Exhibit B
Beachwood East
WDS study location

Exhibit B
Ocean Club and Seascape Villas
WDS study location

Exhibit B
Ocean Club and Seascape Villas
WDS study location

Exhibit B
Harbor Island
WDS study location

The Citadel
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

March 25, 2015

Blair N. Williams
Manager, Wetland Permitting and Certification
South Carolina Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Re: SI Systems – Ocean Club Study

File: NA

Blair:

Please find this letter as a formal request from The Citadel's Department of Civil and Environmental Engineering to perform a continuation of the Wave Dissipation System pilot study allowable under R.30.A(2). R.30.A(2) states a permit is not required if the activity involves "conservation, replenishment and research activities of State agencies and educational institutions;...provided that such activities cause no material harm to flora, fauna, physical, or aesthetic resources of the area." This submittal includes the scope of work, purpose of the research proposed, the type of data to be collected and associated analysis, and installation and construction methodology.

Scope of Work – The scope of work for the continued pilot study at Ocean Club is to install the Wave Dissipation System (initially as shown on the attached survey) and to monitor the performance of the system in response to cycles of wave loading.

Purpose of the Proposed Research – The purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under extreme loading that is imminent as the beach continues to lower and the adjacent scarp line continues to retreat. "Performance" is defined here as follows:

1) The ultimate goal of the study is to determine the ability of the Wave Dissipation System to protect the building foundation at Ocean Club (in comparison to sand bags). As will be outlined in the Installation and Construction Methodology Section, it is anticipated that continued beach lowering in front of the Wave Dissipation System will result in

occasions of required vertical reset of the system and installation of additional vertical and horizontal elements (i.e., third and final line of defense –within existing footprint). If more of the building approaches the emergency situation, the system will also be extended to the property line and returned back using extended wing walls. If the extension is required, the timing and exact layout of extension will be submitted to OCRM at least 14 days prior to proposed installation.

2) The scarp behind the Wave Dissipation System will be measured and a secondary performance measure will be the ability of the Wave Dissipation System to stabilize the scarp line. It should be noted that the Wave Dissipation System allows water to move through the elements and once the scarp line is stabilized (i.e., once the natural movement dimension of the escarpment is self defined by typical wave and moving water conditions) its relative movement will be measured.
3) Finally, performance of the system will be measured using numerous tests where horizontal spacers and related horizontal elements are studied in regards to sand accretion and erosion in front of and behind the system.

Type of Data to be Collected and Associated Analysis –

1) Permanent deformations of the vertical and horizontal elements shall be noted during site visits. Members that are out of plum shall be noted.
2) Localized scour shall be evident on surveys but site visits will also note if any localized scour is present and caused by the WDS orientation.
3) Beach elevations in front of and behind the first and second line WDS elements will be measured along the length of the system.
4) Daily water level data from the Charleston Harbor tide Gauge, wind speed and direction data from the weather station at Folly Beach and wave height data from the nearest buoy (all available online) will be recorded.
5) A network of beach profile monitoring stations at the WDS installation site will be established. The network will include 100 ft spacings for 500 ft on both sides of the installation site. A minimum of 10 representative sample locations for each transect will be included and monitoring stations shall extend out to low tide wading depth. At least one survey will be obtained every 30 days. Additional surveys will be obtained if warranted (after significant storm events, etc., when determined necessary by the project PI).
6) The profile data shall be used to measure scarp line retreat and changes in sand volume at all monitoring stations. Tables comparing sand volume changes at all stations will be prepared.

Installation and Construction Methodology – The scarp line has quickly retreated from over 100 ft away from the subject building corner to merely 20 ft as of 3/21/15. My recommendation is that OCRM permit the installation of the entire system when it arrives on site. Deron Nettles of SI Systems is in charge installation and I will ask him to provide shipment dates directly via email to OCRM staff. Piles will arrive prior to the housing units and the horizontal members.

Proposed changes to the WDS –

1) Possible additional extension and short WDS line at center to protect entire building footprint to property lines. See Figure 1 below.
2) Possible 45 degree added WDS line. See Figure 2 below.
3) Varying panel spacings in the WDS lines. (0.25 in., 0.5. in., and 0.75 in. proposed)
4) Lowering of the WDS when extreme elevation drops occur to ensure WDS does not permit quick moving water under horizontal elements.
5) Beach compatible sand utilization after installation and potentially after heavy storm event.
6) Different materials in the slots of the horizontal panels to prevent rubbing damage when horizontal members spin in the housing units.

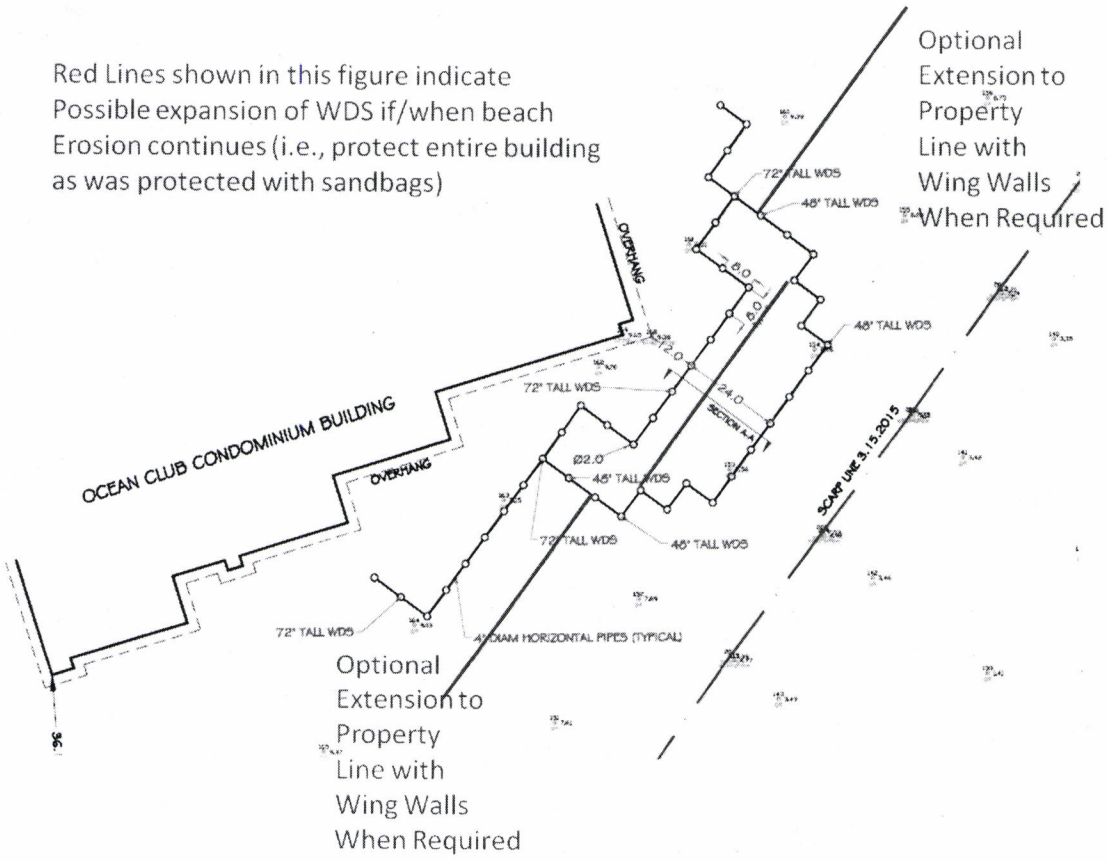


Figure 1

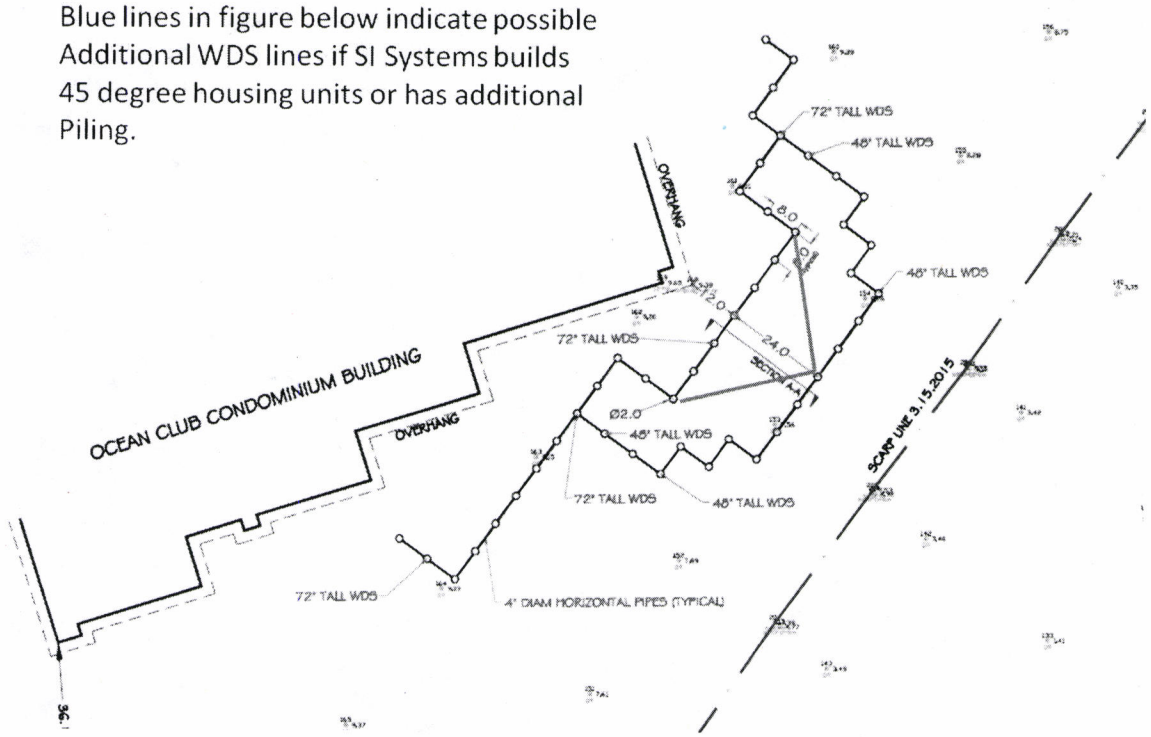


Figure 2

Very truly yours,

Timothy W. Mays, Ph.D., P.E., Associate Professor, Project PI

D H E C
PROMOTE PROTECT PROSPER
W. Marshall Taylor Jr., Acting Director
Promoting and protecting the health of the public and the environment

April 17, 2015

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Research Activity associated with a Wave Dissipation System at Ocean Club Villas, Isle of Palms affiliated with The Citadel

Dear Dr. Mays,

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (the Department) has reviewed the submitted information regarding a proposed installation and continued research of the Wave Dissipation System (WDS) at Ocean Club Villas in the Wild Dunes community on the Isle of Palms, SC. As described in your submittal, "the purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under extreme loading that is imminent as the beach continues to lower and the adjacent scarp line continues to retreat." Based on the information you have supplied, the Department has determined this activity meets the exception pursuant to R.30-5(A)(2) and will not require a direct critical area permit, provided the conditions below are met.

The Department encourages and welcomes new technology that is proven, fully researched, and which demonstrates no environmental harm. Therefore, the following specific monitoring requirements must be implemented for the duration of the experimental project to help determine the environmental benefits or impacts, if any, of the WDS:

1) Sand must not be trucked to the site, scraped from the beach, or otherwise brought to the project site and must not be placed seaward or landward of the WDS for the duration of the study.

2) The intended duration of the WDS study at Ocean Club Villas must not exceed 1 year from the date installation starts, and research data must be submitted to the Department quarterly for the duration of the project.

3) The WDS must be installed as shown in Attachment A. The research team must notify the Department 24 hours prior to the start of installation and within 24 hours upon completion of installation. If sandbags are present at the installation site, they must be removed from the beach in conjunction with installation of the WDS.

4) For the duration of the study, the research team must record daily water level data from the Charleston Harbor tide gauge, wind speed and direction data from the weather station at Folly Beach, and wave height data from the nearest wave buoy (all available online), for a record of physical conditions during the study.

5) The research team must establish a network of beach profile monitoring stations at and adjacent to the WDS installation site. Profile transects should be spaced 20 feet apart along the length of the WDS and 100 feet apart for 1,000 linear feet on either side of the installation site. A minimum of 10 equally-spaced elevation measurements along each transect is required. Beach profile data should be collected along each transect before installation and then monthly after installation, from the monitoring stations out to low tide wading depth (approximately -5 feet MSL).

6) The research team must analyze beach profile data for scarp-line retreat and also changes in sand volume at all monitoring stations. Tables and graphs comparing sand volume changes at all stations must be prepared and provided to the Department in the quarterly reports.

7) Precise beach elevation measurements must be obtained monthly immediately seaward of any WDS wall (first tier, second tier, etc.) and immediately landward of any WDS wall. These elevations can be measured along the same transects noted in condition 5 above. Tables comparing changes in beach elevation seaward of any WDS wall and landward of any WDS wall at each transect throughout the duration of the study should be included in the final report. Photographs of the beach surface should be taken seaward and landward of any WDS wall on the days when these elevation data are collected, and these photos should also be included in the final report.

8) The research team must document the date on which any adjustments to the WDS occur, no matter how minor the adjustments may be, including resetting the horizontal elements of the WDS. For significant modifications, such as adding a third WDS line, adding 45 degree angled WDS lines, extending the WDS structure to the Ocean Club property lines, or repositioning the vertical elements of the WDS, the research team must provide details of the proposed adjustments to the Department in writing at least 14 days in advance of proposed significant modifications. Photographs must be taken before and after any minor adjustments and significant modifications, and these photos must be provided to the Department within 24 hours.

9) Visual monitoring of the system must be performed daily, and the research team is responsible for the day to day maintenance of the system to insure that it remains intact and in good repair. In the event the system is damaged or destroyed, all debris must be recovered and removed immediately. The research team is responsible for the complete removal of the system when so ordered by the Department. If the system is not maintained in place and in good repair the Department will order removal.

10) The research team must be in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the study. NPPL conducts daily, early surveys of the beach to document turtle nesting activity and should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or sea turtle adult is encountered, all work should cease and the NPPL should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052 (office) or 843.303.2097 (cell). The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

Please feel free to contact Blair Williams at 843-953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division

cc: Sara Pendarvis Bazemore, SCDHEC OCRM
Blair N. Williams, SCDHEC OCRM

The Citadel
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

April 7, 2015

Blair N. Williams
Manager, Wetland Permitting and Certification
South Carolina Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Re: SI Systems – Harbor Island Study

File: NA

Blair:

Please find this letter as a formal request from The Citadel's Department of Civil and Environmental Engineering to perform a continuation of the Wave Dissipation System pilot study allowable under R.30.A(2). R.30.A(2) states a permit is not required if the activity involves "conservation, replenishment and research activities of State agencies and educational institutions;...provided that such activities cause no material harm to flora, fauna, physical, or aesthetic resources of the area." This submittal includes the scope of work, purpose of the research proposed, the type of data to be collected and associated analysis, and installation and construction methodology.

Scope of Work – The scope of work for the continued pilot study at Harbor Island is to install the Wave Dissipation System (initially as shown on the attached survey) and to monitor the performance of the system in response to cycles of wave loading.

Purpose of the Proposed Research – The purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under less extreme loading (more tidal in this location due to low beach elevation and smaller waves with possible periods of respite). "Performance" is defined here as follows:

1) The ultimate goal of the study is to determine the ability of the Wave Dissipation System to protect the building foundations and existing dune line footprints at Harbor Island (in comparison to sand bags). As will be outlined in the Installation and Construction Methodology Section, it is anticipated that continued beach lowering in front of the Wave

Dissipation System may result in occasions of required vertical reset of the system and installation of more complete returns (into the existing high ground – not proposed at initial installation to avoid impacting roots and existing vegetation) at the ends of the WDS. If the extension is required, the timing and exact layout of extension will be submitted to OCRM at least 14 days prior to proposed installation.

2) The scarp behind the Wave Dissipation System will be measured and a primary performance measure will be the ability of the Wave Dissipation System to stabilize the scarp line. The ability of the WDS to accrete sand (for possible dune mitigation) behind the system will also be a study area at this site. Finally, a comparison of WDS before and after a Harbor Island scraping project will also be studied should the community elect to perform the scraping project.
3) Finally, performance of the system will be measured using numerous tests where horizontal spacers and related horizontal elements are studied in regards to sand accretion and erosion in front of and behind the system. Note that this site is using a larger pile spacing and horizontal spacers (at certain times during the study) to avoid the negative impact of system stiffness (see previous study comments) when tides are low and wave impacts minimal.

Type of Data to be Collected and Associated Analysis –

1) Permanent deformations of the vertical and horizontal elements shall be noted during site visits. Members that are out of plum shall be noted.
2) Localized scour shall be evident on surveys but site visits will also note if any localized scour is present and caused by the WDS orientation.
3) Beach elevations in front of and behind the WDS elements will be measured along the length of the system.
4) Sand bag surveys with pictures (see next section) shall be performed to determine their movement and performance during the study.
5) Daily water level data from the OCRM recommended tide Gauge, wind speed and direction data from the weather station at OCRM recommended site and wave height data from the nearest buoy (if available online) will be recorded.
6) A network of beach profile monitoring stations at the WDS installation site will be established. The network will include 100 ft spacings for 500 ft on both sides of the installation site. A minimum of 10 representative sample locations for each transect will be included and monitoring stations shall extend out to low tide wading depth. At least one survey will be obtained every 45 days (not to exceed 60 days pending tide/weather conditions). Additional surveys will be obtained if warranted (after significant storm events, etc., when determined necessary by the project PI).
7) The profile data shall be used to measure scarp line retreat and changes in sand volume at all monitoring stations. Tables comparing sand volume changes at all stations will be prepared.

Installation and Construction Methodology –My recommendation is that OCRM permit the installation of the entire system when it arrives on site (and permit received from Corps of Engineers). Deron Nettles of SI Systems is in charge installation and I will ask him to provide

shipment dates directly via email to OCRM staff. Piles will arrive prior to the housing units and the horizontal members.

Proposed changes to the WDS –

1) Possible additional extension of wing walls at WDS termination point into high ground.
2) Varying panel spacings in the WDS lines. (0.25 in., 0.5. in., and 0.75 in. proposed)
3) Lowering of the WDS when extreme elevation drops occur to ensure WDS does not permit quick moving water under horizontal elements.
4) Beach compatible sand utilization after installation and potentially after heavy storm event.
5) Different materials in the slots of the horizontal panels to prevent rubbing damage when horizontal members spin in the housing units.
6) Small step back at the roofs lot to accommodate new walkway over wall at this open lot.

Very truly yours,

Timothy W. Mays, Ph.D., P.E., Associate Professor, Project PI

D H E C

PROMOTE PROTECT PROSPER

W. Marshall Taylor Jr., Acting Director

Promoting and protecting the health of the public and the environment

May 4, 2015

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Research Activity associated with a Wave Dissipation System at Harbor Island, affiliated with The Citadel

Dear Dr. Mays,

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (the Department) has reviewed the submitted information regarding a proposed installation and continued research of the Wave Dissipation System (WDS) at the approved properties identified on Attachment A located on Harbor Island, SC. As described in your submittal, "the purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under less extreme loading (more tidal in this location due to low beach elevation and smaller waves with possible periods of respite)." Based on the information you have supplied, the Department has determined this activity meets the exception pursuant to R.30-5(A)(2) and will not require a direct critical area permit, provided the conditions below are met.

Installation of the WDS adjacent to the Harbor Island Owners Association (HIOA) community beach access may only be considered by the Department if written permission from the HIOA is obtained. Until submittal of this written permission to the Department and subsequent written approval by the Department, the WDS is not authorized at this location.

The Department encourages and welcomes new technology that is proven, fully researched, and which demonstrates no environmental harm. Therefore, the following specific monitoring requirements must be implemented for the duration of the experimental project to help determine the environmental benefits or impacts, if any, of the WDS:

1) Sand must not be trucked to the site, scraped from the beach, or otherwise brought to the project site and must not be placed seaward or landward of the WDS for the duration of the study.

2) The intended duration of the WDS study at Harbor Island must not exceed 1 year from the date installation starts, and research data must be submitted to the Department quarterly for the duration of the project.

3) The WDS must be installed as shown in Attachment A. The research team must notify the Department 24 hours prior to the start of installation and within 24 hours upon completion of installation. Due to the shallow piling foundations of the houses at 116 North Harbor Drive (Lot 49) and 122 North Harbor Drive (Lot 52), the Department is not requiring the removal of the existing sandbags immediately surrounding the foundation at those locations. However, the Department believes that the presence of the sandbags will result in a study that is inconclusive and of limited usefulness for future decision-making.

4) For the duration of the study, the research team must record daily water level data from the St. Helena Sound tide gauge, wind speed and direction data from the nearest weather station, and wave height data from the nearest wave buoy (all available online), for a record of physical conditions during the study.

5) The research team must establish a network of beach profile monitoring stations at and adjacent to the WDS installation site. Profile transects should be spaced 20 feet apart along the length of the WDS and 100 feet apart for 1,000 linear feet on either side of the installation site. A minimum of 10 equally-spaced elevation measurements along each transect is required. Beach profile data should be collected along each transect before installation and then monthly after installation, from the monitoring stations out to low tide wading depth (approximately -5 feet MSL).

6) The research team must analyze beach profile data for scarp-line retreat and also changes in sand volume at all monitoring stations. Tables and graphs comparing sand volume changes at all stations must be prepared and provided to the Department in the quarterly reports.

7) Precise beach elevation measurements must be obtained monthly immediately seaward of any WDS wall (first tier, second tier, etc.) and immediately landward of any WDS wall. These elevations can be measured along the same transects noted in condition 5 above. Tables comparing changes in beach elevation seaward of any WDS wall and landward of any WDS wall at each transect throughout the duration of the study should be included in the final report. Photographs of the beach surface should be taken seaward and landward of any WDS wall on the days when these elevation data are collected, and these photos should also be included in the final report.

8) The research team must document the date on which any adjustments to the WDS occur, no matter how minor the adjustments may be, including resetting the horizontal elements of the WDS. For significant modifications, such as expanding the footprint of the structure, the research team must provide details of the proposed adjustments to the Department in writing at least 14 days in advance of proposed significant modifications. Photographs must be taken before and after any minor adjustments and significant modifications, and these photos must be provided to the Department within 24 hours.

9) Visual monitoring of the system must be performed daily, and the research team is responsible for the day to day maintenance of the system to insure that it remains intact and in good repair. In the event the system is damaged or destroyed, all debris must be recovered and removed

immediately. The research team is responsible for the complete removal of the system when so ordered by the Department. If the system is not maintained in place and in good repair the Department will order removal.

10) The research team must be in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the study. NPPL conducts daily, early surveys of the beach to document turtle nesting activity and should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or sea turtle adult is encountered, all work should cease and the NPPL should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052 (office). The NPPL contact for this area is Fran Nolan at 843.838.4878 (home) and 843.238.6256 (cell).

11) The Citadel, in accepting the conditions of this acknowledgement, covenants and agrees to comply with and abide by the conditions herein and assumes all responsibility and liability and agrees to save SCDHEC OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this acknowledgement.

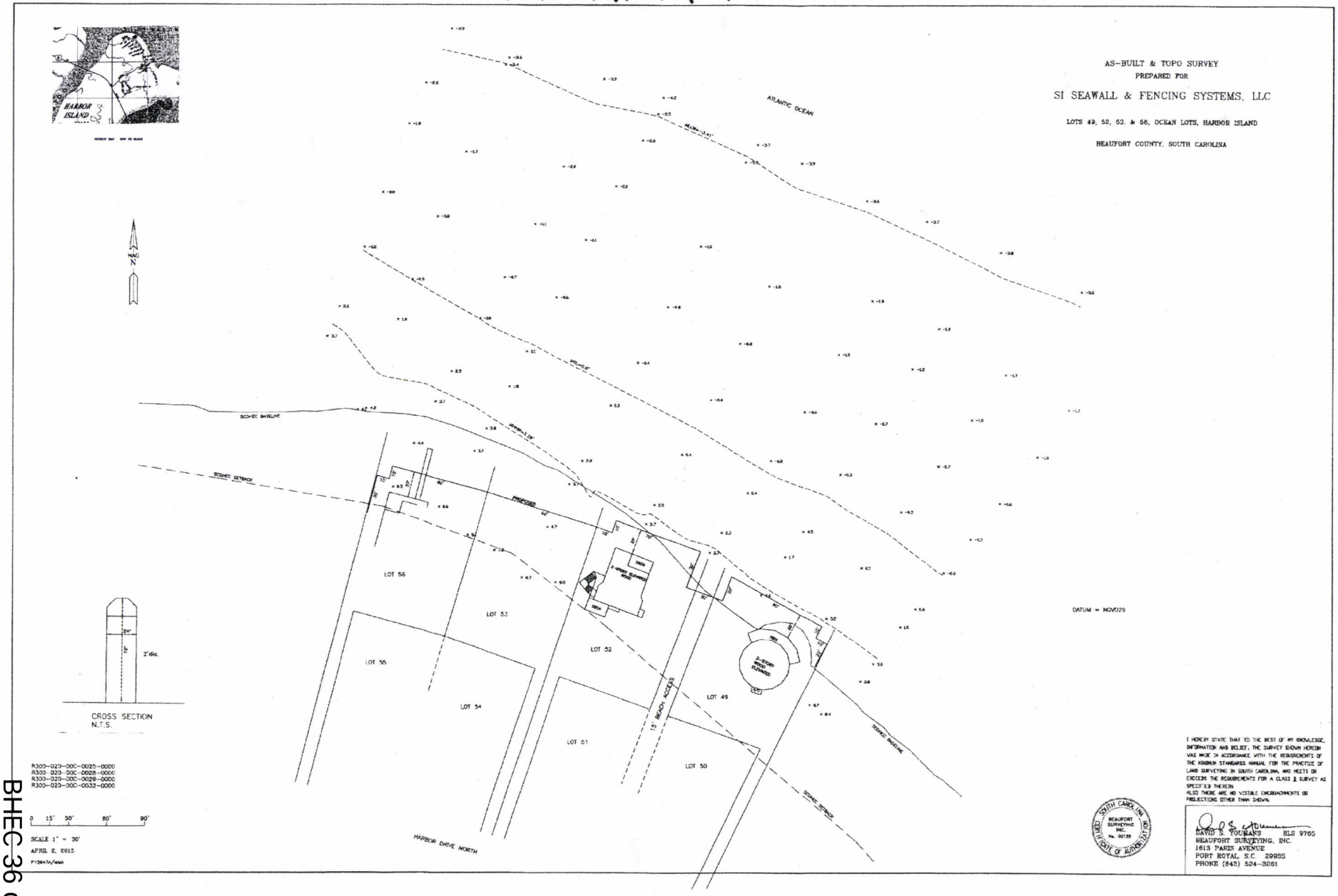
Please feel free to contact Blair Williams at 843-953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division

cc: Sara Pendarvis Bazemore, SCDHEC OCRM
Blair N. Williams, SCDHEC OCRM

Attachment A



The Citadel
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

May 6, 2015

Blair N. Williams
Manager, Wetland Permitting and Certification
South Carolina Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Re: SI Systems – Beachwood East Study

File: NA

Blair:

Please find this letter as a formal request from The Citadel's Department of Civil and Environmental Engineering to perform a continuation of the Wave Dissipation System pilot study allowable under R.30.A(2). R.30.A(2) states a permit is not required if the activity involves "conservation, replenishment and research activities of State agencies and educational institutions;...provided that such activities cause no material harm to flora, fauna, physical, or aesthetic resources of the area." This submittal includes the scope of work, purpose of the research proposed, the type of data to be collected and associated analysis, and installation and construction methodology.

Scope of Work – The scope of work for the continued pilot study at Beachwood East is to install the Wave Dissipation System (initially as shown on the attached survey) and to monitor the performance of the system in response to cycles of wave loading.

Purpose of the Proposed Research – The purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under less extreme loading than the installation at Ocean Club yet more extreme loading, and not as tidal, as the installation at Harbor Island. "Performance" is defined here as follows:

1) The ultimate goal of the study is to determine the ability of the Wave Dissipation System to protect the building foundations and existing dune line footprints at Beachwood East (in comparison to sand bags). As will be outlined in the Installation and Construction Methodology Section, it is anticipated that continued beach lowering in front of the Wave

Dissipation System may result in occasions of required vertical reset of the system and installation of more complete returns (into the existing high ground at the ends of the WDS). If the extension is required, the timing and exact layout of the extension will be submitted to OCRM at least 14 days prior to proposed installation.

2) The scarp behind the Wave Dissipation System will be measured and a primary performance measure will be the ability of the Wave Dissipation System to stabilize the scarp line. The ability of the WDS to accrete sand (for possible dune mitigation) behind the system will also be a study area at this site.
3) Finally, performance of the system will be measured using numerous tests where horizontal spacers and related horizontal elements are studied in regards to sand accretion and erosion in front of and behind the system. Note that this site is using an initial installation of one WDS line. It is not anticipated that a second line be needed but depending on how much the beach elevation drops over time, one may be proposed at a later date.

Type of Data to be Collected and Associated Analysis –

1) Permanent deformations of the vertical and horizontal elements shall be noted during site visits. Members that are out of plum shall be noted.
2) Localized scour shall be evident on surveys but site visits will also note if any localized scour is present and caused by the WDS orientation.
3) Beach elevations in front of and behind the WDS elements will be measured along the length of the system.
4) Daily water level data from the OCRM recommended tide Gauge, wind speed and direction data from the weather station at OCRM recommended site and wave height data from the nearest buoy (if available online) will be recorded.
5) A network of beach profile monitoring stations at the WDS installation site will be established. The network will include 100 ft spacings for 500 ft on both sides of the installation site. A minimum of 10 representative sample locations for each transect will be included and monitoring stations shall extend out to low tide wading depth. At least one survey will be obtained every 45 days (not to exceed 60 days pending tide/weather conditions). Additional surveys will be obtained if warranted (after significant storm events, etc., when determined necessary by the project PI).
6) The profile data shall be used to measure scarp line retreat and changes in sand volume at all monitoring stations. Tables comparing sand volume changes at all stations will be prepared.

Installation and Construction Methodology –My recommendation is that OCRM permit the installation of the entire system when it arrives on site (and permit received from Corps of Engineers). Deron Nettles of SI Systems is in charge of the installation and I will ask him to provide shipment dates directly via email to OCRM staff.

Proposed changes to the WDS –

1) Possible additional extension of wing walls (or modified returns) at WDS termination point into high ground.
2) Varying panel spacings in the WDS lines. (0.25 in., 0.5. in., and 0.75 in. proposed)

3) Lowering of the WDS when extreme elevation drops occur to ensure WDS does not permit quick moving water under horizontal elements.
4) Beach compatible sand utilization after installation and potentially after heavy storm event.
5) Different materials in the slots of the horizontal panels to prevent rubbing damage when horizontal members spin in the housing units.

Very truly yours,

Timothy W. Mays, Ph.D., P.E., Associate Professor, Project PI

D H E C
PROMOTE PROTECT PROSPER
W. Marshall Taylor Jr., Acting Director
Promoting and protecting the health of the public and the environment

June 2, 2015

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Research Activity associated with a Wave Dissipation System at Beachwood East, Wild Dunes, Isle of Palms affiliated with The Citadel

Dear Dr. Mays,

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (the Department) has reviewed the submitted information regarding a proposed installation and continued research of the Wave Dissipation System (WDS) seaward of nine houses along Beachwood East in the Wild Dunes community on the Isle of Palms, SC. As described in your submittal, "the purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under less extreme loading than the installation at Ocean Club yet more extreme loading, and not as tidal, as the installation at Harbor Island." Based on the information you have supplied, the Department has determined this activity meets the exception pursuant to R.30-5(A)(2) and will not require a direct critical area permit, provided the conditions below are met.

The Department encourages and welcomes new technology that is proven, fully researched, and which demonstrates no environmental harm. Therefore, the following specific monitoring requirements must be implemented for the duration of the experimental project to help determine the environmental benefits or impacts, if any, of the WDS:

1) The WDS cannot be installed in front of the house at 17 Beachwood East until the existing unauthorized rock revetment is removed from the site.

2) Sand must not be trucked to the site, scraped from the beach, or otherwise brought to the project site and must not be placed seaward or landward of the WDS for the duration of the study.

3) The intended duration of the WDS study at Beachwood East must not exceed 1 year from the date installation starts, and research data must be submitted to the Department quarterly for the duration of the project.

4) The WDS must be installed as shown in Attachment A with the exception to lot 17 as mentioned above in special condition number 1. The research team must notify the Department 24 hours prior to the start of installation and within 24 hours upon completion of installation. If sandbags are present at the installation site, they must be removed from the beach in conjunction with installation of the WDS.

5) For the duration of the study, the research team must record daily water level data from the Charleston Harbor tide gauge, wind speed and direction data from the weather station at Folly Beach, and wave height data from the nearest wave buoy (all available online), for a record of physical conditions during the study.

6) The research team must establish a network of beach profile monitoring stations at and adjacent to the WDS installation site. Profile transects should be spaced 40 feet apart along the length of the WDS and 100 feet apart for 1,000 linear feet on either side of the installation site. A minimum of 10 equally-spaced elevation measurements along each transect is required. Beach profile data should be collected along each transect before installation and then monthly after installation, from the monitoring stations out to low tide wading depth (approximately -5 feet MSL).

7) The research team must analyze beach profile data for scarp-line retreat and also changes in sand volume at all monitoring stations. Tables and graphs comparing sand volume changes at all stations must be prepared and provided to the Department in the quarterly reports.

8) Precise beach elevation measurements must be obtained monthly immediately seaward of any WDS wall (first tier, second tier, etc.) and immediately landward of any WDS wall. These elevations can be measured along the same transects noted in condition 5 above. Tables comparing changes in beach elevation seaward of any WDS wall and landward of any WDS wall at each transect throughout the duration of the study should be included in the final report. Photographs of the beach surface should be taken seaward and landward of any WDS wall on the days when these elevation data are collected, and these photos should also be included in the final report.

9) The research team must document the date on which any adjustments to the WDS occur, no matter how minor the adjustments may be, including resetting the horizontal or vertical elements of the WDS. For significant modifications, such as adding a second WDS line, extending the WDS structure, or extending wing walls, the research team must provide details of the proposed adjustments to the Department in writing at least 14 days in advance of proposed significant modifications. Photographs must be taken before and after any minor adjustments and significant modifications, and these photos must be provided to the Department within 24 hours.

10) Visual monitoring of the system must be performed daily, and the research team is responsible for the day to day maintenance of the system to insure that it remains intact and in good repair. In the event the system is damaged or destroyed, all debris must be recovered and removed immediately. The research team is responsible for the complete removal of the system when so ordered by the Department. If the system is not maintained in place and in good repair the Department will order removal.

11) The research team must be in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the study. NPPL conducts daily, early surveys of the beach to document turtle nesting activity and should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or sea turtle adult is encountered, all work should cease and the NPPL should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052 (office). The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

12) The Citadel, in accepting the conditions of this acknowledgement, covenants and agrees to comply with and abide by the conditions herein and assumes all responsibility and liability and agrees to save SCDHEC OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this acknowledgement.

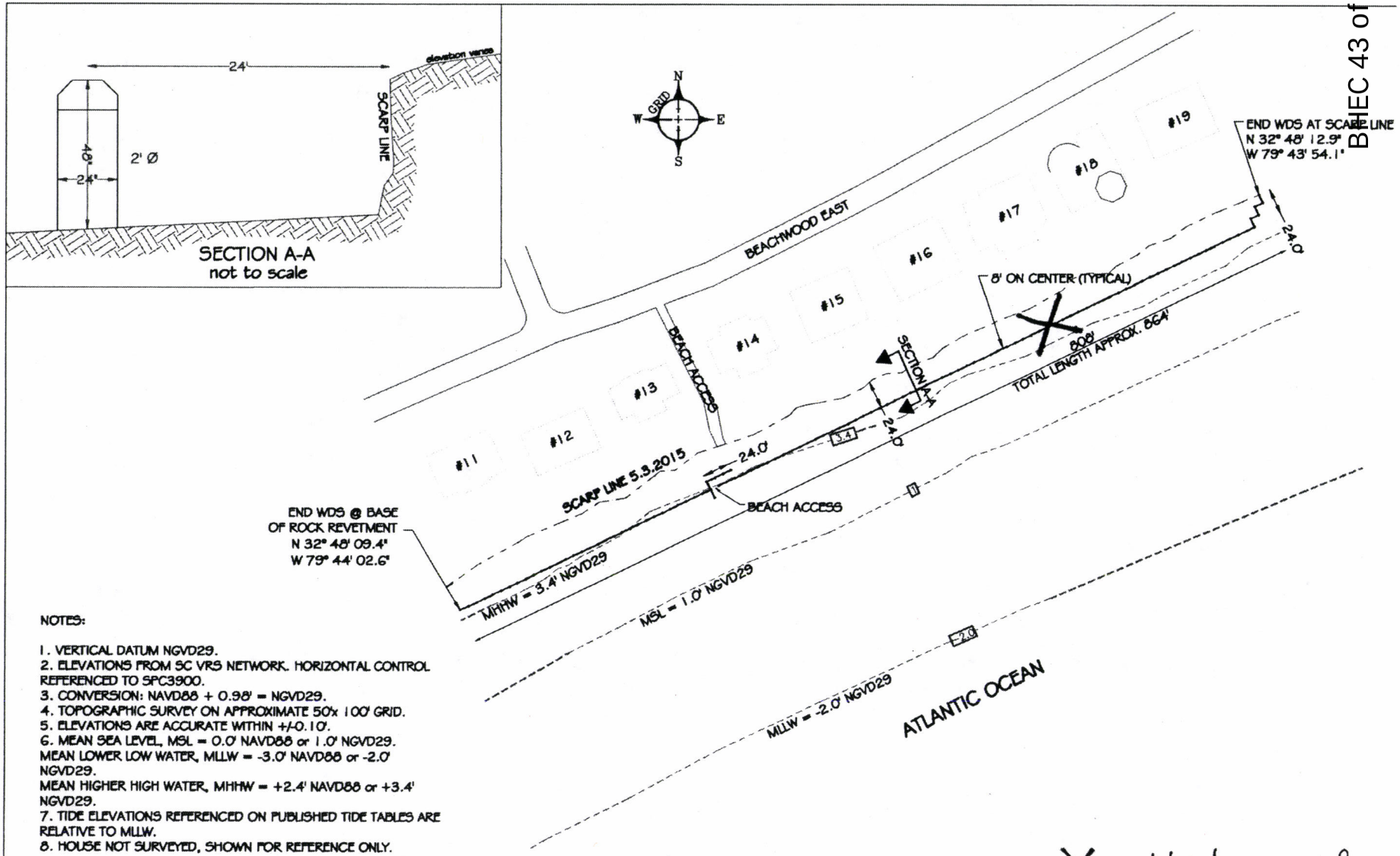
Please feel free to contact Blair Williams at 843-953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division

cc: Sara Pendarvis Bazemore, SCDHEC OCRM
Blair N. Williams, SCDHEC OCRM

Attachment A



NOTES:

1. VERTICAL DATUM NGVD29.
2. ELEVATIONS FROM SC VRS NETWORK. HORIZONTAL CONTROL REFERENCED TO SPC3900.
3. CONVERSION: NAVD88 + 0.98' = NGVD29.
4. TOPOGRAPHIC SURVEY ON APPROXIMATE 50'x 100' GRID.
5. ELEVATIONS ARE ACCURATE WITHIN +/-0.10'.
6. MEAN SEA LEVEL, MSL = 0.0' NAVD88 or 1.0' NGVD29.
   MEAN LOWER LOW WATER, MLLW = -3.0' NAVD88 or -2.0' NGVD29.
   MEAN HIGHER HIGH WATER, MHHW = +2.4' NAVD88 or +3.4' NGVD29.
7. TIDE ELEVATIONS REFERENCED ON PUBLISHED TIDE TABLES ARE RELATIVE TO MLLW.
8. HOUSE NOT SURVEYED, SHOWN FOR REFERENCE ONLY.

X → deleted per special Condition Number 1

PROJECT TITLE: WAVE DISSIPATION SYSTEM PILOT STUDY BEACHWOOD EAST
APPLICANT: 9 HOMEOWNERS (AT BEACHWOOD EAST)
LOCATION: 11–19 BEACHWOOD EAST,
ISLE OF PALMS, SC 29451
DATE: 5.3.2015
SAC#

0 40 80 160
scale: 1" = 80'

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR No. 17623 MATTHEW J. HALTER

Matthew J. Halter, PE, PLS
120 Sandhill Path
Summerville, SC 29483
843-514-9415

The Citadel
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

September 22, 2015

Blair N. Williams
Manager, Wetland Permitting and Certification
South Carolina Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Re: SI Systems – Seascape Study

File: NA

Blair:

Please find this letter as a formal request from The Citadel's Department of Civil and Environmental Engineering to perform a continuation of the Wave Dissipation System pilot study allowable under R.30.A(2). R.30.A(2) states a permit is not required if the activity involves "conservation, replenishment and research activities of State agencies and educational institutions;...provided that such activities cause no material harm to flora, fauna, physical, or aesthetic resources of the area." This submittal includes the scope of work, purpose of the research proposed, the type of data to be collected and associated analysis, and justification for this additional study site.

Scope of Work – The scope of work for the continued pilot study at Seascape is to install the Wave Dissipation System (initially as shown on the attached survey) and to monitor the performance of the system in response to cycles of wave loading.

Purpose of the Proposed Research – The purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under extreme loading that is imminent as the beach continues to lower and the adjacent scarp line continues to retreat. "Performance" is defined here as follows:

1) The ultimate goal of the study is to determine the ability of the Wave Dissipation System to protect the building foundation at Seascape (in comparison to sand bags). It is anticipated that continued beach lowering in front of the Wave Dissipation System will result in occasions of required vertical reset of the system and installation of additional

vertical and horizontal elements (i.e., third and final line of defense –within existing footprint). If more of the building approaches the emergency situation, the system will also be extended to the property line and returned back using extended wing walls. If the extension is required, the timing and exact layout of extension will be submitted to OCRM at least 14 days prior to proposed installation (unless emergency conditions required an expedited install).

2) The scarp behind the Wave Dissipation System will be measured and a secondary performance measure will be the ability of the Wave Dissipation System to stabilize the scarp line. It should be noted that the Wave Dissipation System allows water to move through the elements and once the scarp line is stabilized (i.e., once the natural movement dimension of the escarpment is self defined by typical wave and moving water conditions) its relative movement will be measured.
3) Finally, performance of the system will be measured using numerous tests where horizontal spacers and related horizontal elements are studied in regards to sand accretion and erosion in front of and behind the system.

Type of Data to be Collected and Associated Analysis –

1) Permanent deformations of the vertical and horizontal elements shall be noted during site visits. Members that are out of plum shall be noted.
2) Localized scour shall be evident on surveys but site visits will also note if any localized scour is present and caused by the WDS orientation.
3) Beach elevations in front of and behind the first and second line WDS elements will be measured along the length of the system.
4) Daily water level data from the Charleston Harbor tide Gauge, wind speed and direction data from the weather station at Folly Beach and wave height data from the nearest buoy (all available online) will be recorded.
5) A network of beach profile monitoring stations at the WDS installation site will be established. The network will include 100 ft spacings for 500 ft on both sides of the installation site. A minimum of 10 representative sample locations for each transect will be included and monitoring stations shall extend out to low tide wading depth. At least one survey will be obtained every 30 days. Additional surveys will be obtained if warranted (after significant storm events, etc., when determined necessary by the project PI).
6) The profile data shall be used to measure scarp line retreat and changes in sand volume at all monitoring stations. Tables comparing sand volume changes at all stations will be prepared.

Justification for this additional study location – During our earlier conversations with OCRM, we were told that additional study sites on the northern half of the Isle of Palms and Harbor Island would be acceptable but that any other additional locations would not be considered acceptable at this time. Seascape is next door to our current Ocean Club site and meets this definition. More importantly, if the location is denied for some reason, Seascape will use sandbags to protect their building and this will affect the results we are obtaining at Ocean Club. Finally, note that Seascape purchased the material for this study last year and has all the material already on site.

Proposed changes to the WDS –

1) Possible additional extension and to protect entire building footprint to property lines.
2) Varying panel spacings in the WDS lines. (0.25 in., 0.5. in., and 0.75 in. proposed)
3) Lowering of the WDS when extreme elevation drops occur to ensure WDS does not permit quick moving water under horizontal elements. An additional vertical system may be designed and tested as well (as an alternative to lowering).
4) Beach compatible sand utilization after installation and potentially after heavy storm event. We recognize that OCRM does not encourage this but since this is allowed with sandbags, it should be allowed with the WDS as well.
5) Different materials in the slots of the horizontal panels to prevent rubbing damage when horizontal members spin in the housing units.

Very truly yours,

Timothy W. Mays, Ph.D., P.E., Professor, Project PI

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

November 12, 2015

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Research Activity associated with a Wave Dissipation System at Seascape Villas, Wild Dunes, Isle of Palms affiliated with The Citadel

Dear Dr. Mays,

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (the Department) has reviewed the submitted information regarding a proposed installation and continued research of the Wave Dissipation System (WDS) at Seascape Villas in the Wild Dunes community on the Isle of Palms, SC. As described in your submittal, "the purpose of the study is to determine and subsequently describe the performance of the Wave Dissipation System under extreme loading that is imminent as the beach continues to lower and the adjacent scarp line continues to retreat." Based on the information you have supplied, the Department has determined this activity meets the exception pursuant to R.30-5(A)(2) and will not require a direct critical area permit, provided the conditions below are met.

The Department encourages and welcomes new technology that is proven, fully researched, and which demonstrates no environmental harm. Therefore, the following specific monitoring requirements must be implemented for the duration of the experimental project to help determine the environmental benefits or impacts, if any, of the WDS:

1) Sand must not be trucked to the site, scraped from the beach, or otherwise brought to the project site and must not be placed seaward or landward of the WDS for the duration of the study.

2) The duration of the WDS study at Seascape Villas must not exceed the end date of the Beachwood East study, July 28, 2016. Research data must be submitted to the Department quarterly from the date of installation.

3) The WDS must be installed as shown in Attachment A. The research team must notify the Department 24 hours prior to the start of installation and within 24 hours upon

completion of installation. Sandbags must be removed from the beach in conjunction with installation of the WDS.

4) For the duration of the study, the research team must record daily water level data from the Charleston Harbor tide gauge, wind speed and direction data from the weather station at Folly Beach, and wave height data from the nearest wave buoy (all available online), for a record of physical conditions during the study.

5) The research team must establish a network of beach profile monitoring stations at and adjacent to the WDS installation site. Profile transects should be spaced 20 feet apart along the length of the WDS and 100 feet apart for 1,000 linear feet on either side of the installation site. A minimum of 10 equally-spaced elevation measurements along each transect is required. Beach profile data should be collected along each transect before installation and then monthly after installation, from the scarp line out to low tide wading depth (approximately -5 feet MSL). Elevation measurements must be collected both landward and seaward of the WDS.

6) The research team must analyze beach profile data for scarp-line retreat and also changes in sand volume at all monitoring stations. Tables and graphs comparing sand volume changes at all stations must be prepared and provided to the Department in the quarterly reports.

7) Precise beach elevation measurements must be obtained monthly immediately seaward of any WDS wall (first tier, second tier, etc.) and immediately landward of any WDS wall. These elevations can be measured along the same transects noted in condition 5 above. Tables comparing changes in beach elevation seaward of any WDS wall and landward of any WDS wall at each transect throughout the duration of the study should be included in the final report. Photographs of the beach surface should be taken seaward and landward of any WDS wall on the days when these elevation data are collected, and these photos should also be included in the final report.

8) The research team must document the date on which any adjustments to the WDS occur, no matter how minor the adjustments may be, including resetting the horizontal or vertical elements of the WDS. For significant modifications, such as adding a second WDS line, extending the WDS structure, or extending wing walls, the research team must provide details of the proposed adjustments to the Department in writing at least 14 days in advance of proposed significant modifications. Photographs must be taken before and after any minor adjustments and significant modifications, and these photos must be provided to the Department within 24 hours.

9) Visual monitoring of the system must be performed daily, and the research team is responsible for the day to day maintenance of the system to insure that it remains intact

and in good repair. In the event the system is damaged or destroyed, all debris must be recovered and removed immediately. The research team is responsible for the complete removal of the system when so ordered by the Department. If the system is not maintained in place and in good repair the Department will order removal.

10) The research team must be in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the study during sea turtle nesting season (May 1 – October 31). NPPL conducts daily, early surveys of the beach to document turtle nesting activity and should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or sea turtle adult is encountered, all work should cease and the NPPL should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052 (office). The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

11) The Citadel, in accepting the conditions of this acknowledgement, covenants and agrees to comply with and abide by the conditions herein. The Citadel agrees to ensure that either Deron Nettles and/or SI Systems, LLC will maintain a general liability insurance policy for the duration of the project. DHEC does not assume any responsibility or liability for any and all claims of damage arising out of operations conducted pursuant to this acknowledgement.

Please feel free to contact Blair Williams at 843-953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

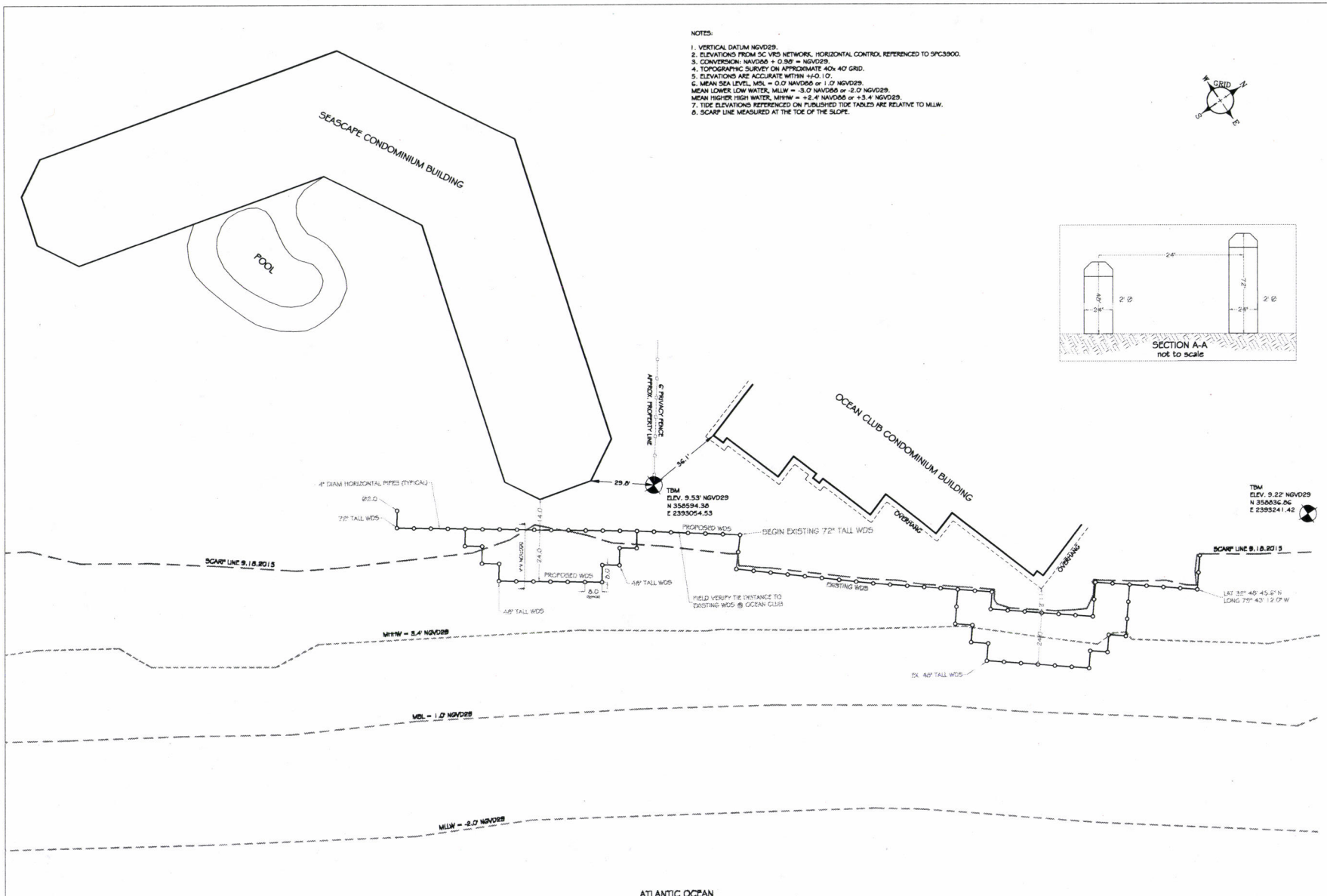
Rheta G. DiNovo, Director
Regulatory Division

cc: Elizabeth von Kolnitz, SCDHEC OCRM
Blair N. Williams, SCDHEC OCRM

ATTACHMENT A

NOTES:

1. VERTICAL DATUM NGVD29.
2. ELEVATIONS FROM SC VRS NETWORK. HORIZONTAL CONTROL REFERENCED TO SPC3900.
3. CONVERSION: NAVD88 + 0.35' = NGVD29.
4. TOPOGRAPHIC SURVEY ON APPROXIMATE 40'x 40' GRID.
5. ELEVATIONS ARE ACCURATE WITHIN +/-0.10'.
6. MEAN SEA LEVEL, MSL = 0.0' NAVD88 or 1.0' NGVD29.
MEAN LOWER LOW WATER, MLLW = -3.0' NAVD88 or -2.0' NGVD29.
MEAN HIGHER HIGH WATER, MHHW = +2.4' NAVD88 or +3.4' NGVD29.
7. TIDE ELEVATIONS REFERENCED ON PUBLISHED TIDE TABLES ARE RELATIVE TO MLLW.
8. SCARP LINE MEASURED AT THE TOE OF THE SLOPE.



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN. ALL ELEVATIONS ARE REFERENCED TO NOTED DATUM.

0 10 20 40
scale: 1" = 20'

Matthew J. Hahn, PE, PLS
120 Sandhill Path
Summerville, SC 29483
843-514-9415

WDS PROPOSAL

SEASCAPE & OCEAN CLUB
WILD DUNES RESORT
ISLE OF PALMS
CHARLESTON COUNTY, SOUTH CAROLINA

SUBMITTAL	DATE

DRAWING DATE: 9.18.2015

SHEET NO. C-1

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Executive Director
Amelia A. Thompson
Staff Attorney
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

Exhibit B

BHEC 61 of 550

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

South Carolina Department of
Natural Resources

PO Box 12559
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Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

July 16, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Beachwood East, Wild Dunes

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at the Isle of Palms. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading than the installation at Ocean Club and more extreme loading as Harbor Island.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) The WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Fran Nolan at 843.838.4878 (home) and 803.238.6256 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
843.953.9399 Fax
Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

May 7, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Harbor Island

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at Harbor Island. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

April 9, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: P/N SAC-2015-00216-2NG, Ocean Club HOA, Wave Dissipation System (WDS) Pilot Study Continuation

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation of a WDS along the shoreline at The Ocean Club on the Isle of Palms. The project is associated with a continuation of a pilot study conducted by the Citadel to monitor the performance of the system in response to cycles of wave loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The use of this system along South Carolina's coast could result in negative impacts to nesting sea turtles. This most recent study attempt represents the second extension of this study and involves a more extensive structure with various modifications. During the initial and extended study phases of this project, the structure installed was subject to numerous modifications and required adjustments such as the placement of sandbags and sand around and behind the structure. The need for such adjustments indicates that the device on its own is not

functioning effectively to protect the shoreline and that additional modification and more extensive structures will be necessary. An Emergency Order for the placement of sandbags was recently issued by The Department of Health and Environmental Control for this same section of shoreline.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

September 11, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is evaluating a report on the Wave Dissipation System (WDS), an experimental project conducted by the Citadel located in Wild Dunes, Isle of Palms, SC. to determine whether or not success is demonstrated and if the WDS causes material harm to the flora, fauna or physical resources of the area under Section 48-30-130(D)(2) of the 1976 Code. Per your request, we are providing the following comments regarding potential impacts of this WDS on important natural resources.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has serious concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The unlimited use of this system along South Carolina's coast could result in significant, negative impacts to nesting sea turtles. To avoid these impacts, this WDS should only be used in highly erosional areas where sea turtle nesting does not occur.

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
843.953.9399 Fax
Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

March 20, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is considering approval for an extension of an experimental project to further study a Wave Dissipation System (WDS) developed by Mr. Deron Nettles of SI Systems, LLC. Through conversations with you and Mr. Nettles, we understand that the initial study revealed some shortcomings with the originally installed WDS and that the purpose of this extended experiment is to gather data on a WDS with a stronger design and different configuration. Per your request, we are providing the following comments for your consideration.

The DNR has a number of questions and concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). The newly designed system consists of eight foot wide panels standing six feet above the beach elevation. A total of 23 panel units will be used to create a 120 foot front wall and a 32 foot wing wall at each end for a total WDS length of 184 feet. Twenty four piles will be embedded 10 to 12 feet into the beach to support the WDS. The WDS will be placed 50' seaward of the existing erosional scarp.

In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

While the DNR would prefer that the WDS not be installed or maintained in place during sea turtle nesting season, we recognize the benefits of gathering additional information on the potential impacts and effectiveness of this system. We also recognize the erosional state of the shoreline in this area and the need for emergency protection measures at the project site. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

2) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS and is interested in receiving a copy of the study results when available. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone (843) 795-7800
Fax (843) 795-3032

KERNODLE COLEMAN
ATTORNEYS AT LAW

RECEIVED
JUL 21 2016
Clerk, Board of Health and Environmental Control
16-RFR-60

Matthew D. Hamrick, Esquire
mhamrick@kernodlelaw.com

July 20, 2016

BY HAND DELIVERY TO:
Ms. Lisa Lucas Longshore, Clerk
SC Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RE: Request for Final Review of Staff Decision of the
Ocean and Coastal Resource Management Division ("OCRM")
Department of Health and Environmental Control ("Department")
July 8, 2016 Wave Dissipation System Study Removal Notification
SI Seawalls & Fencing Systems, LLC; and Wave Dissipation Systems, LLC ("Requestors"); Request made in accordance with SC Code §44-1-60, SC Code Ann.

Dear Madam Clerk:

I represent the above-referenced Requestors, who seek final review by the Board of the staff decision of the Department to require the removal of the Wave Dissipation System ("WDS") devices located at Ocean Club Villas, Seascape Villas, and Beachwood East on the Isle of Palms, SC and at Harbor Island, SC by July 28, 2016. Attachment "A" hereto is the letter (with all attachments) dated July 8, 2016 to Dr. Timothy Mays, Professor of Civil Engineering at The Citadel, The Military College of South Carolina, requiring that the aforementioned WDS devices be removed by July 28, 2016. The Requestors are, respectively, the company that has contracted with The Citadel and with the owners of the properties being protected from erosion by the WDS devices, and the company that holds the patent on the WDS. The Requestors are affected and interested parties with standing to bring this Request for Final Review.

The Requestors hereby join in all arguments set forth in the Requests for Final Review filed by Seascape Villas Horizontal Property Regime, Inc.; Wild Dunes Ocean Club Horizontal Property Regime, Inc.; Michael Ricci, Patricia Gardner, Phillip Derrick Hampton and Travis E. Hampton, Paul Conway, Jimmy and Barbara Bernstein, Kathy Balazs-Coffee and Brian Coffee, William and Nancy Longfield, Michael Safdi, D.J. Rama, and Frank Skinner ("Co-Requestors"), and Requestors hereby incorporate by reference, as if fully restated here verbatim, all arguments contained in the Requests for Final Review filed by the Co-Requestors and all exhibits thereto.

I have enclosed my firm's check for your $100 filing fee.

With kind personal regards, I remain

Sincerely yours,

Matthew D. Hamrick

Enclosure

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Dr. Timothy Mays
Department of Civil and Environmental Engineering
171 Moultrie Street
Charleston, SC 29409

RE: Wave Dissipation System Study Period and Removal Notification

Dear Dr. Mays,

As you are aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is providing notice that all WDS installations must be removed from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

Please proceed with ensuring the removal of all WDS installations at Harbor Island and Isle of Palms (Ocean Club Villas, Seascape Villas, and Beachwood East) by July 28, 2016. This includes all horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS. The vertical pilings and casings cannot remain in the beach system independent of the horizontal panels as they pose a potential safety hazard to the public using the beach. Please document to the Department when removal activities will commence at each location, and again once the structures have been removed.

Coordination with the local turtle Nest Protection Project Leader (NPPL) is required each day prior to and during any removal work. This coordination is necessary to ensure that no new turtle nests are present in the area that may be impacted by removal activities. Please ensure that the NPPL has documented the presence or absence of nesting activity daily and provide that information to the Department. The NPPL for Isle of Palms is Mary Pringle, and she can be reached at 843-886-8733 (home) or 843-697-8733 (cell). The NPPL for Harbor Island is Fran Nolan, and she can be reached at 843-838-4878 (home) or 843-238-6256 (cell).

The Department has notified property owners with WDS installation of the removal requirements and provided information for obtaining emergency orders (EO) for temporary protection of their habitable structures. We will work closely with your research team and the property owners to coordinate the removal of the WDS and completion of any measures approved under an EO.

The Citadel's final report from the pilot study is due to the Department by August 28, 2016. The final report should document your observations and findings for each of the four WDS installations. As you are aware, the Department has also contracted with an independent coastal engineering professional to evaluate the project. Conclusions from both reports will be presented to the Department's Board in late fall 2016.

Please feel free to contact me or Blair Williams at (843) 953-0232 or williabn@dhec.sc.gov with any questions or concerns.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256
dinovorg@dhec.sc.gov

cc: Elizabeth von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

Attachment 1

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

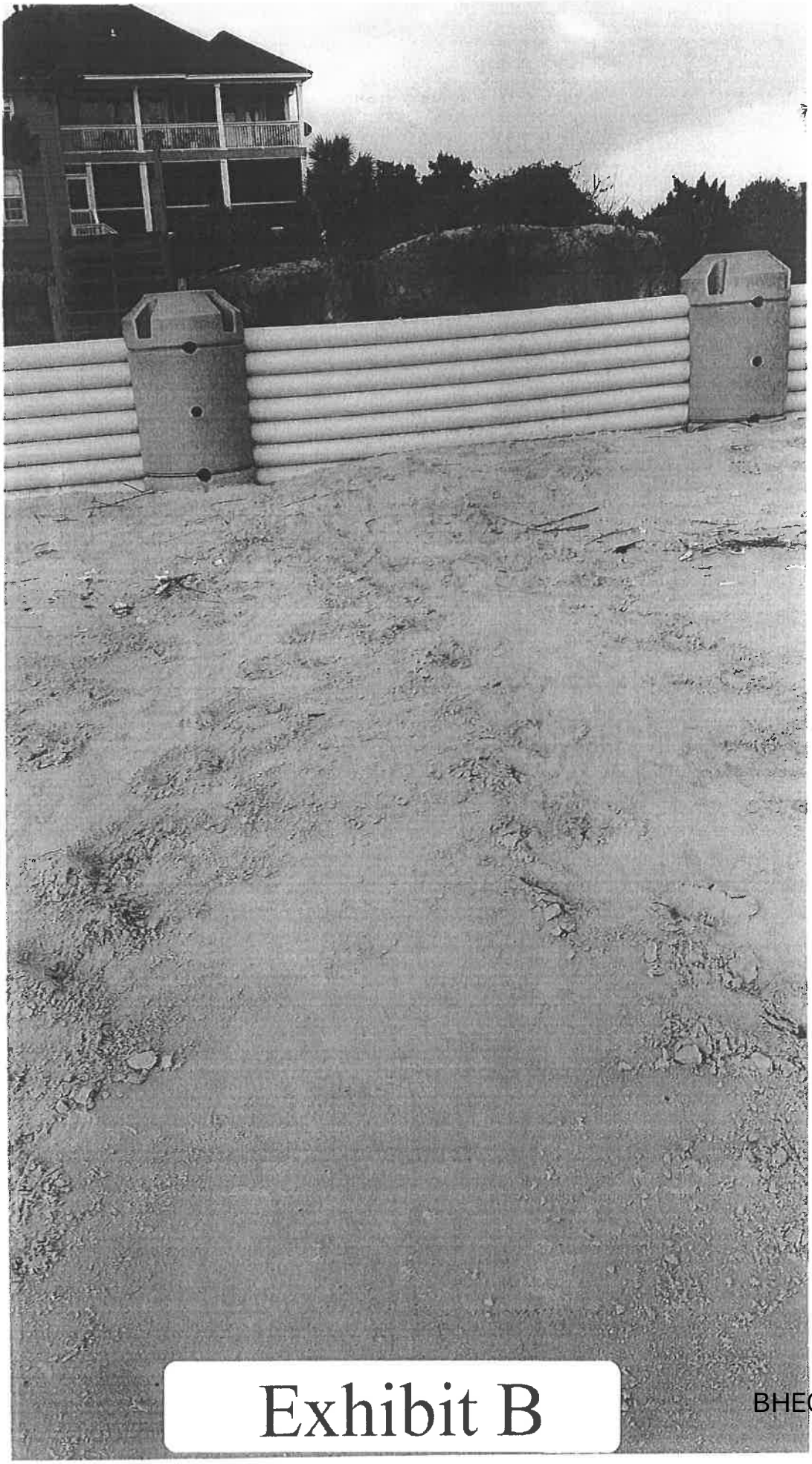
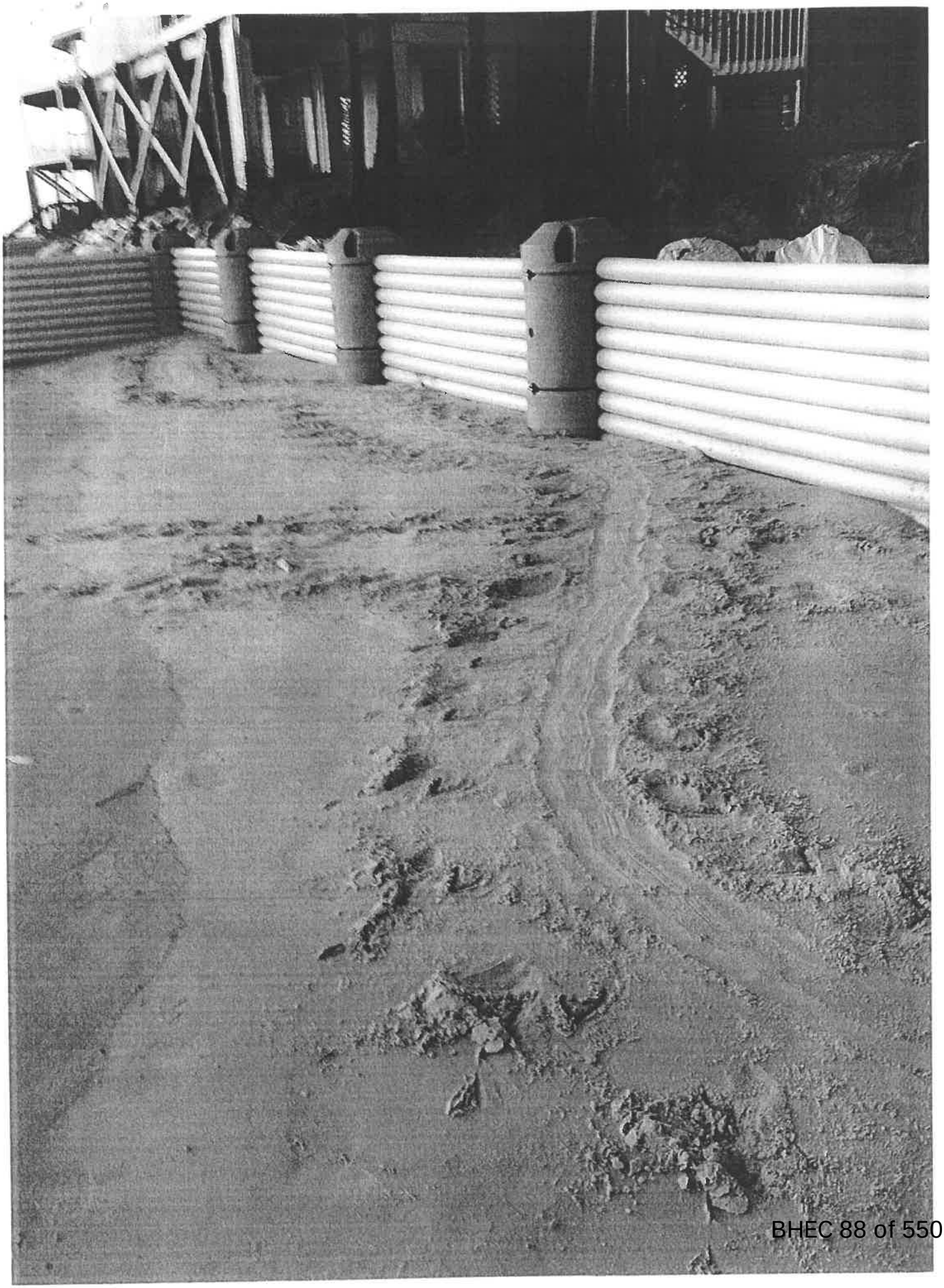


Exhibit B



South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

July 16, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Beachwood East, Wild Dunes

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at the Isle of Palms. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading than the installation at Ocean Club and more extreme loading as Harbor Island.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) The WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Fran Nolan at 843.838.4878 (home) and 803.238.6256 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

May 7, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Harbor Island

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at Harbor Island. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

April 9, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: P/N SAC-2015-00216-2NG, Ocean Club HOA, Wave Dissipation System (WDS) Pilot Study Continuation

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation of a WDS along the shoreline at The Ocean Club on the Isle of Palms. The project is associated with a continuation of a pilot study conducted by the Citadel to monitor the performance of the system in response to cycles of wave loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The use of this system along South Carolina's coast could result in negative impacts to nesting sea turtles. This most recent study attempt represents the second extension of this study and involves a more extensive structure with various modifications. During the initial and extended study phases of this project, the structure installed was subject to numerous modifications and required adjustments such as the placement of sandbags and sand around and behind the structure. The need for such adjustments indicates that the device on its own is not

functioning effectively to protect the shoreline and that additional modification and more extensive structures will be necessary. An Emergency Order for the placement of sandbags was recently issued by The Department of Health and Environmental Control for this same section of shoreline.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
843.953.9399 Fax
Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

September 11, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is evaluating a report on the Wave Dissipation System (WDS), an experimental project conducted by the Citadel located in Wild Dunes, Isle of Palms, SC. to determine whether or not success is demonstrated and if the WDS causes material harm to the flora, fauna or physical resources of the area under Section 48-30-130(D)(2) of the 1976 Code. Per your request, we are providing the following comments regarding potential impacts of this WDS on important natural resources.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has serious concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The unlimited use of this system along South Carolina's coast could result in significant, negative impacts to nesting sea turtles. To avoid these impacts, this WDS should only be used in highly erosional areas where sea turtle nesting does not occur.

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

March 20, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is considering approval for an extension of an experimental project to further study a Wave Dissipation System (WDS) developed by Mr. Deron Nettles of SI Systems, LLC. Through conversations with you and Mr. Nettles, we understand that the initial study revealed some shortcomings with the originally installed WDS and that the purpose of this extended experiment is to gather data on a WDS with a stronger design and different configuration. Per your request, we are providing the following comments for your consideration.

The DNR has a number of questions and concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). The newly designed system consists of eight foot wide panels standing six feet above the beach elevation. A total of 23 panel units will be used to create a 120 foot front wall and a 32 foot wing wall at each end for a total WDS length of 184 feet. Twenty four piles will be embedded 10 to 12 feet into the beach to support the WDS. The WDS will be placed 50' seaward of the existing erosional scarp.

In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

While the DNR would prefer that the WDS not be installed or maintained in place during sea turtle nesting season, we recognize the benefits of gathering additional information on the potential impacts and effectiveness of this system. We also recognize the erosional state of the shoreline in this area and the need for emergency protection measures at the project site. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

2) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS and is interested in receiving a copy of the study results when available. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

BOWERS LAW OFFICE LLC
Post Office Box 50549
Columbia, South Carolina 29250

Phone: 803-753-1099 **butch@butchbowers.com**

July 21, 2016

Hand Delivered

Ms. Lisa Lucas Longshore, Clerk
SC Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RE: Request for Final Review of Staff Decision of the
Ocean and Coastal Resource Management Division ("OCRM")
Department of Health and Environmental Control ("Department")
July 8, 2016 Wave Dissipation System Study Removal Notification,
Wild Dunes Ocean Club Horizontal Property Regime ("Ocean Club"), Isle of Palms, SC
("Requestor")
Request made in accordance with SC Code §44-1-60, SC Code Ann.

Dear Madam Clerk:

Wild Dunes Ocean Club Horizontal Property Regime ("Ocean Club") seeks final review by the Board of the staff decision of the Department to require the removal of the Wave Dissipation System at Ocean Club by July 28, 2016. Attachment A hereto is the letter (with all attachments) dated July 8, 2016 to Ms. Beth Colley, the former property manager for Ocean Club[1], requiring that the Wave Dissipation System protecting Ocean Club from erosion be removed by July 28, 2016. The WDS was placed on the beach in front of Ocean Club consistent with the legislative enactment in 2015-2016, Part 1B §34-J040-Department of Health and Environmental Control Budget Proviso 34.48 of the 2015-2016 Appropriation Act. Under this legislation, and that for 2016-2017 (DHEC Proviso 34.47, both Provisos attached as Exhibit B1 and B2), the legislature provided that OCRM shall initiate the Wave Dissipation Device Pilot Program. Ocean Club has invested over $350,000 in the installation of the WDS and the study, and has standing to bring this Request for Final Review.

Ocean Club is a condominium regime on the beachfront located at 9510 Palmetto Drive, Isle of Palms, SC 29451. Ocean Club requests the Board to review the staff decision and reverse it in its entirety. The staff decision to remove the WDS was made without notice and opportunity for a hearing, depriving Ocean Club of its constitutional right to due process under the state and federal constitutions and under the SC Administrative Procedures Act, S. C. Code Ann § 1-23-310(3).

[1] Ms. Colley's tenure as Ocean Club's property manager ended on June 1, 2016. Matthew Bennett of Poston & Co. is the current property manager for Ocean Club.

Ocean Club has substantial rights that are affected by the staff decision to remove the WDS as its property and that of its members are at risk of damage from erosion without redress of this decision.

The staff decision subject to this request is arbitrary, capricious, and an abuse of discretion. There is no basis for the removal under the Proviso, nor under the applicable state statute allowing such activities without a permit found at 48-39-130(D)(2). The only basis that can be found in the Proviso for removal of all or any portion of a qualified WDS is by a determination that it "causes a material harm to the flora, fauna, physical or aesthetic resources of the area" under the above-cited code section. There is no such finding by OCRM, nor is there a basis for a finding of material harm from the WDS. There was not even an allegation of material harm in the staff decision notice sent by OCRM to Ocean Club. Instead, included in its email of July 8 was correspondence from the SC Department of Natural Resources (DNR) finding that the "impact of these false crawls is comparable to those that would normally occur in highly erosional areas where the shoreline characterized by steep erosional scarp", and that "there is not necessarily evidence and material harm to the turtle attempting to nest nor to subsequent potential nesting activity". *See* Attachment B.

The other information in the staff notice requiring removal of the WDS is the South Carolina Environmental Law Project ("SCELP") letter providing sixty (60) day notice of an intention to file a suit under the Endangered Species Act against DHEC, the US Department of Commerce and the US Department of the Interior. The SCELP allegation of harm to turtles nesting on the Isle of Palms is based on the 'false crawls' of turtles that encounter the WDS and return to the sea. The allegation includes that "any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking[2] of an endangered species." *See* Attachment C. The allegation is not supported by the facts as the highly erosional area where the WDS are installed is not nesting habitat. The erosional escarpment, building structures, pavement or other conditions in such areas are not the sand dune areas suitable for digging a nest to lay eggs. The installation of the WDS in this location is precisely due to this highly erosional condition that threatens the Ocean Club buildings.

The staff decision is also arbitrary and capricious in that it states that the study will end on July 28, 2016 when there is no legislative or regulatory basis for the study to end, and significantly nor for the WDS to be removed at the end of the study. The Provisos, with S. C. Code Ann § 48-39-320(C), allow the installation of the WDS without a permit. An arbitrarily imposed condition on the time for the study or continuation of use of the WDS without any report or evaluation of any data is outside the authority of OCRM. Only a finding of material harm as legislated can be the basis for ending the study and removal of the WDS, pending a review of the study results.

The study of the WDS at Ocean Club, purchased by Ocean Club homeowners, is by conducted Dr. Timothy Mays of the Citadel. His resulting report and the data or study being developed by a contractor (General Engineering Laboratories) directly for OCRM should be evaluated to determine whether the erosion control protection being afforded by the WDS is an appropriate alternative to use of sandbags pursuant to emergency orders. Without any material harm to the environment from the WDS, there is no basis to order the removal or to set an arbitrary date for

[2] The ESA definition of 'take' is "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 USC Section 1532.

ending the study. The results of the study, especially for Ocean Club that has only had its WDS in place since November 2015, may be that additional study is required, and that the end of the study is only the end of data collection pending further review, provided, as is the case here, there is no material harm to the flora, fauna, physical or aesthetic resources of the area.

Finally, the staff decision should be reversed on the basis of estoppel. Staff informed the Citadel, and thus the private purchasers of the WDS being studied, that:

> "the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision. If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time."

The staff decision takes the promised Board decision out its hands solely due to unproven allegations and a threat of litigation. There is no time for Ocean Club to request and obtain an emergency order for sand bags, also an expensive replacement for the WDS; there is no guarantee that an emergency order for sandbags would be issued. Because Ocean Club relied upon the staff statement about when removal may be required Ocean Club has not yet made a request for any replacement protection. The Ocean Club property would be damaged and at risk from king tides and storms with no protection. OCRM must be estopped from requiring the removal of the WDS.

The notice issued by OCRM for removal of the Ocean Club WDS does not allow time for or make any provisions for any replacement protection, puts this private property at risk, is not based on the only criteria allowed for requiring removal, is inconsistent with a statement of OCRM staff relied upon by Ocean Club, is arbitrary, capricious, unreasonable and an abuse of discretion. Accordingly, this Board should reverse the staff decision in its entirety.

Very truly yours,

Karl S. Bowers, Jr.

Enclosures: OCRM Notice with Attachments; Filing Fee of $100.00

ATTACHMENT A

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Ms. Beth Colley
Adams Properties
P.O. Box 190
Mt. Pleasant, SC 29465

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Ms. Colley,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Ocean Club Villas on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

ATTACHMENT B

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

ATTACHMENT C

The South Carolina Environmental Law Project
Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

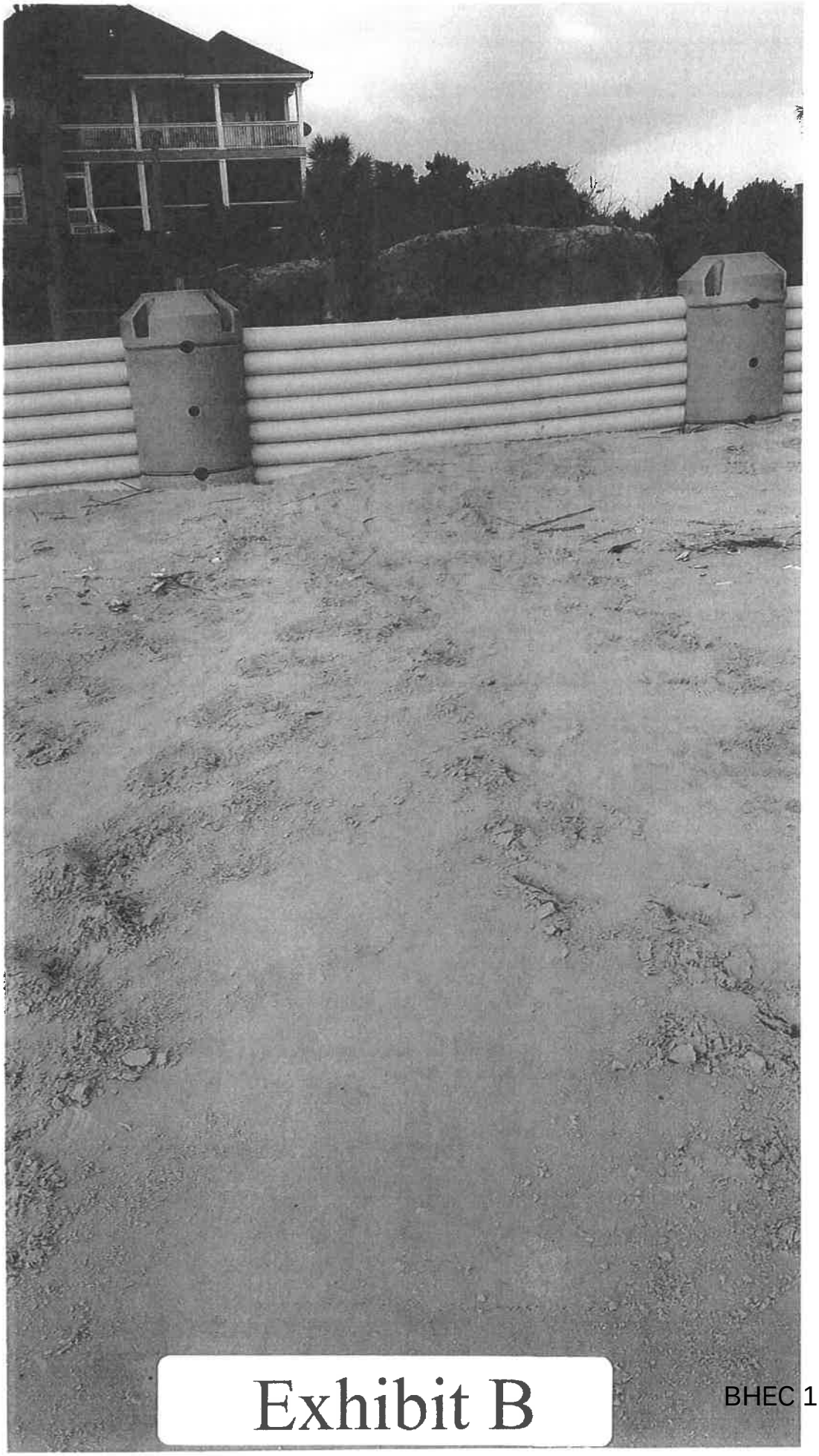
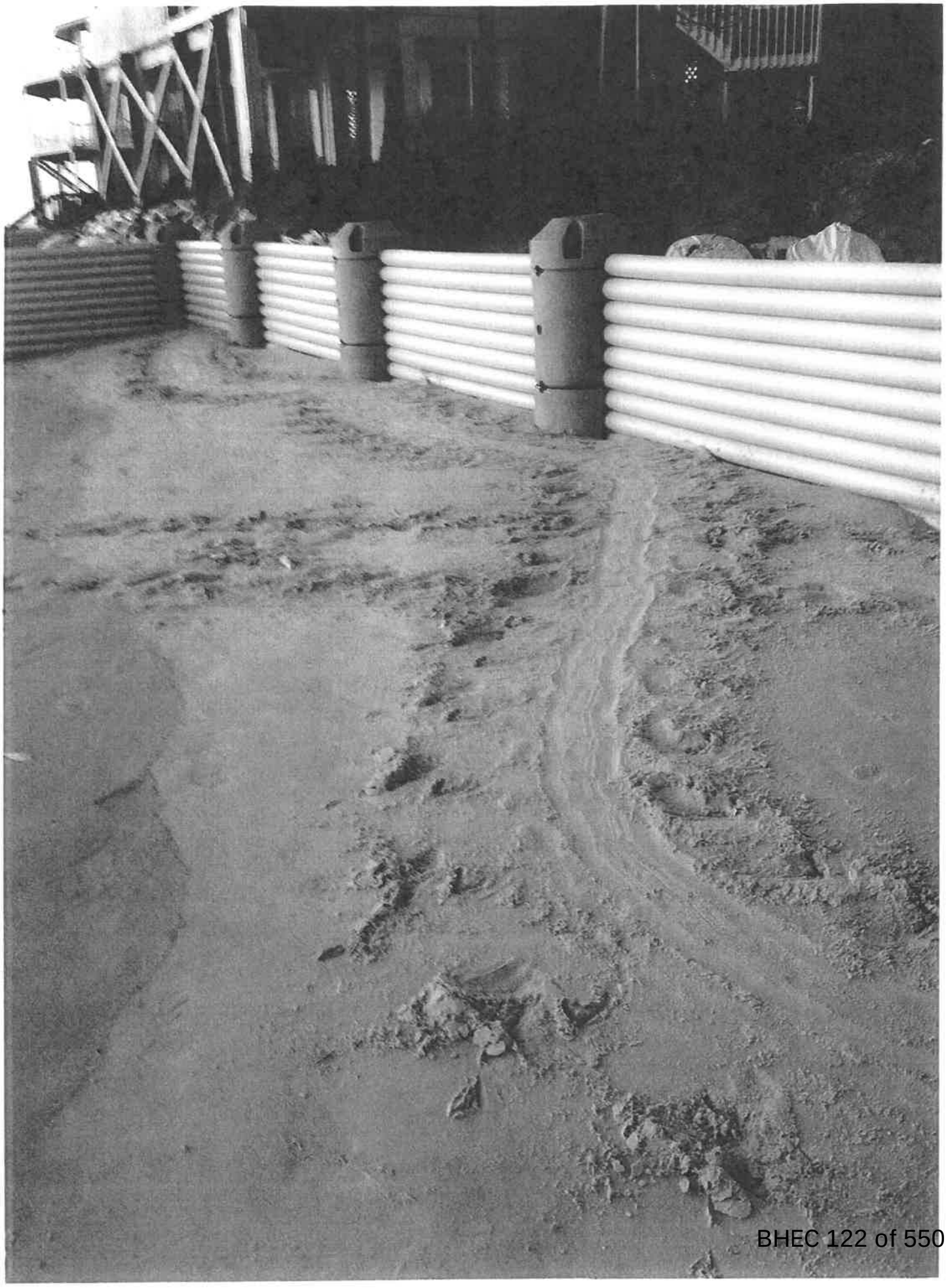


Exhibit B



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JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

Nelson Mullins

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jack.smith@nelsonmullins.com

July 20, 2016

Hand Delivered

Ms. Lisa Lucas Longshore, Clerk
SC Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RE: Request for Final Review of Staff Decision of the
Ocean and Coastal Resource Management Division ("OCRM")
Department of Health and Environmental Control ("Department")
July 8, 2016 Wave Dissipation System Study Removal Notification
Seascape Villas Horizontal Property Regime, Inc., Isle of Palms, SC ("Requestor")
Request made in accordance with §44-1-60, SC Code Ann.

Dear Madam Clerk:

Seascape Villas Horizontal Property Regime, Inc. ("Seascape") seeks final review by the Board of the staff decision of the Department to require the removal of the Wave Dissipation System at Seascape by July 28, 2016. Attachment A hereto is the letter (with all attachments) dated July 8, 2016 to Ms. Lona Vest, property manager for Seascape requiring that the Wave Dissipation System protecting Seascape from erosion be removed by July 28, 2016. The WDS was placed on the beach in front of Seascape consistent with the legislative enactment in 2015-2016, Part 1B §34-J040-Department of Health and Environmental Control Budget Proviso 34.48 of the 2015-2016 Appropriation Act. Under this legislation, and that for 2016-2017 (DHEC Proviso 34.47, both Provisos attached as Exhibit B1 and B2), the legislature provided that OCRM shall initiate the Wave Dissipation Device Pilot Program. Seascape has invested over $200,000 in the installation of the WDS and the study, and has standing to bring this Request for Final Review.

Seascape is a condominium regime on the beachfront located at 9002 Palmetto Drive, Isle of Palms, SC 29451 consisting of 50 units. Seascape requests the Board to review the staff decision and reverse it in its entirety. The staff decision to remove the WDS was made without notice and opportunity for a hearing, depriving Seascape of its constitutional right to due process under the state and federal constitutions and under the SC Administrative Procedures Act, S. C. Code Ann. § 1-23-310(3). Seascape has substantial rights that are affected by the

staff decision to remove the WDS as its property and that of its members are at risk of damage from erosion without redress of this decision.

The staff decision subject to this request is arbitrary, capricious, and an abuse of discretion. There is no basis for the removal under the Proviso, nor under the applicable state statute allowing such activities without a permit found at § 48-39-130(D)(2). The only basis that can be found in the Proviso for removal of all or any portion of a qualified WDS is by a determination that it "causes a material harm to the flora, fauna, physical or aesthetic resources of the area" under the above-cited code section. There is no such finding by OCRM, nor is there a basis for a finding of material harm from the WDS. There was not even an allegation of material harm in the staff decision notice sent by OCRM to Seascape. Instead, included in its email of July 8 was correspondence from the SC Department of Natural Resources (DNR) finding that the "impact of these false crawls is comparable to those that would normally occur in highly erosional areas where the shoreline characterized by steep erosional scarp", and that "there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity". *See* Attachment A, p. 1, OCRM Attachment 2, July 8, 2016 notice.

The other information in the staff notice requiring removal of the WDS is the South Carolina Environmental Law Project ("SCELP") letter providing sixty (60) day notice of an intention to file a suit under the Endangered Species Act against DHEC, the US Department of Commerce and the US Department of the Interior. The SCELP allegation of harm to turtles nesting on the Isle of Palms is based on the 'false crawls' of turtles that encounter the WDS and return to the sea. The allegation includes that "any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking[1] of an endangered species." *See* Attachment A, p. 4, OCRM Attachment 1, July 8, 2016 notice. The allegation is not supported by the facts as the highly erosional area where the WDS are installed is not nesting habitat. The erosional escarpment, building structures, pavement or other conditions in such areas are not the sand dune areas suitable for digging a nest to lay eggs. The installation of the WDS in this location is precisely due to this highly erosional condition that threatens the Seascape buildings.

The staff decision is also arbitrary and capricious in that it states that the study will end on July 28, 2016 when there is no legislative or regulatory basis for the study to end, and, significantly, nor for the WDS to be removed at the end of the study. The Provisos, with S. C. Code Ann. §§ 48-39-130(D)(2) and 320(C), allow the installation of the WDS without a permit. An arbitrarily imposed condition on the time for the study or continuation of use of the WDS without any report or evaluation of any data is outside the authority of OCRM. Only a finding of material harm as legislated can be the basis for ending the study and removal of the WDS, pending a review of the study results.

[1] The ESA definition of 'take' is "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 USC Section 1532.

The study of the WDS at Seascape, purchased by Seascape homeowners, is by conducted Dr. Timothy Mays of the Citadel. His resulting report and the data or study being developed by a contractor (General Engineering Laboratories) directly for OCRM should be evaluated to determine whether the erosion control protection being afforded by the WDS is an appropriate alternative to use of sandbags pursuant to emergency orders. Without any material harm to the environment from the WDS, there is no basis to order the removal or to set an arbitrary date for ending the study. The results of the study, especially for Seascape that has only had its WDS in place since November, may be that additional study is required, and that the end of the study is only the end of data collection pending further review, provided, as is the case here, there is no material harm to the flora, fauna, physical or aesthetic resources of the area.

Finally, the staff decision should be reversed on the basis of estoppel. Staff informed the Citadel, and thus the private purchasers of the WDS being studied, that:

> "the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision. If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time."

The staff decision takes the promised Board decision out its hands solely due to unproven allegations and a threat of a law suit. There is no time for Seascape to request and obtain an emergency order for sand bags, also an expensive replacement for the WDS; there is no guarantee that an emergency order for sandbags would be issued. Because Seascape relied upon the staff statement about when removal may be required Seascape has not yet made a request for any replacement protection. The Seascape property would be damaged and at risk from king tides and storms with no protection. OCRM must be estopped from requiring the removal of the WDS.

The notice issued by OCRM for removal of the Seascape WDS does not allow time for or make any provisions for any replacement protection, puts this private property at risk, is not based on the only criteria allowed for requiring removal, is inconsistent with a statement of OCRM staff relied upon by Seascape, is arbitrary, capricious, unreasonable and an abuse of discretion. The decision is also unsupported by the provisions of the Provisos and S. C. Code Ann. §§ 48-39-130(D)(2) and 320(C). This Board should reverse the staff decision in its entirety.

Please let me know as soon as possible if this request will be heard by the Board. Thank you.

Very truly yours,

Newman Jackson Smith

NJS:csf
Enclosures OCRM Notice with Attachments; Filing Fee of $100.00

Jack Smith

From: Lona Vest <lona@charlestonpms.com>
Sent: Friday, July 08, 2016 3:13 PM
To: Jack Smith
Subject: FW: End of Wave Dissipation System Study Period and Removal Notification
Attachments: SeascapeVillas_WDSstudyend.pdf; Attach 1_60day notice SCELP.pdf; Attach 2_SCDNR_27June16.pdf; Attach3_SeascapeVillas_EOProcess2016.pdf

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From: DiNovo, Rheta [mailto:dinovorg@dhec.sc.gov]
Sent: Friday, July 08, 2016 12:52 PM
To: lona@charlestonpms.com
Cc: Williams, Blair N.; Vonkolnitz, Elizabeth
Subject: End of Wave Dissipation System Study Period and Removal Notification

Ms. Vest,

Please find attached correspondence regarding the year-long pilot study of the Wave Dissipation System (WDS) being conducted by the Citadel at four locations on Harbor Island and the Isle of Palms, South Carolina. This letter is being provided to notify you that the Department is requiring the Citadel research team to remove the WDS structure by the end of the study period which is July 28, 2016. A copy of this correspondence will follow by postal mail.

If you have any questions regarding the attached or need additional information, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov

Rheta DiNovo

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
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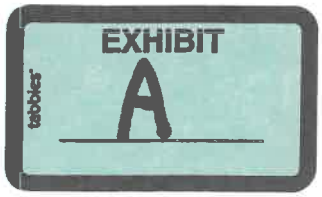

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Ms. Lona Vest
Property Management Services
1340-G Ben Sawyer Blvd.
Mt. Pleasant, SC 29464

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Ms. Vest,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Seascape Villas on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

The South Carolina Environmental Law Project
Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

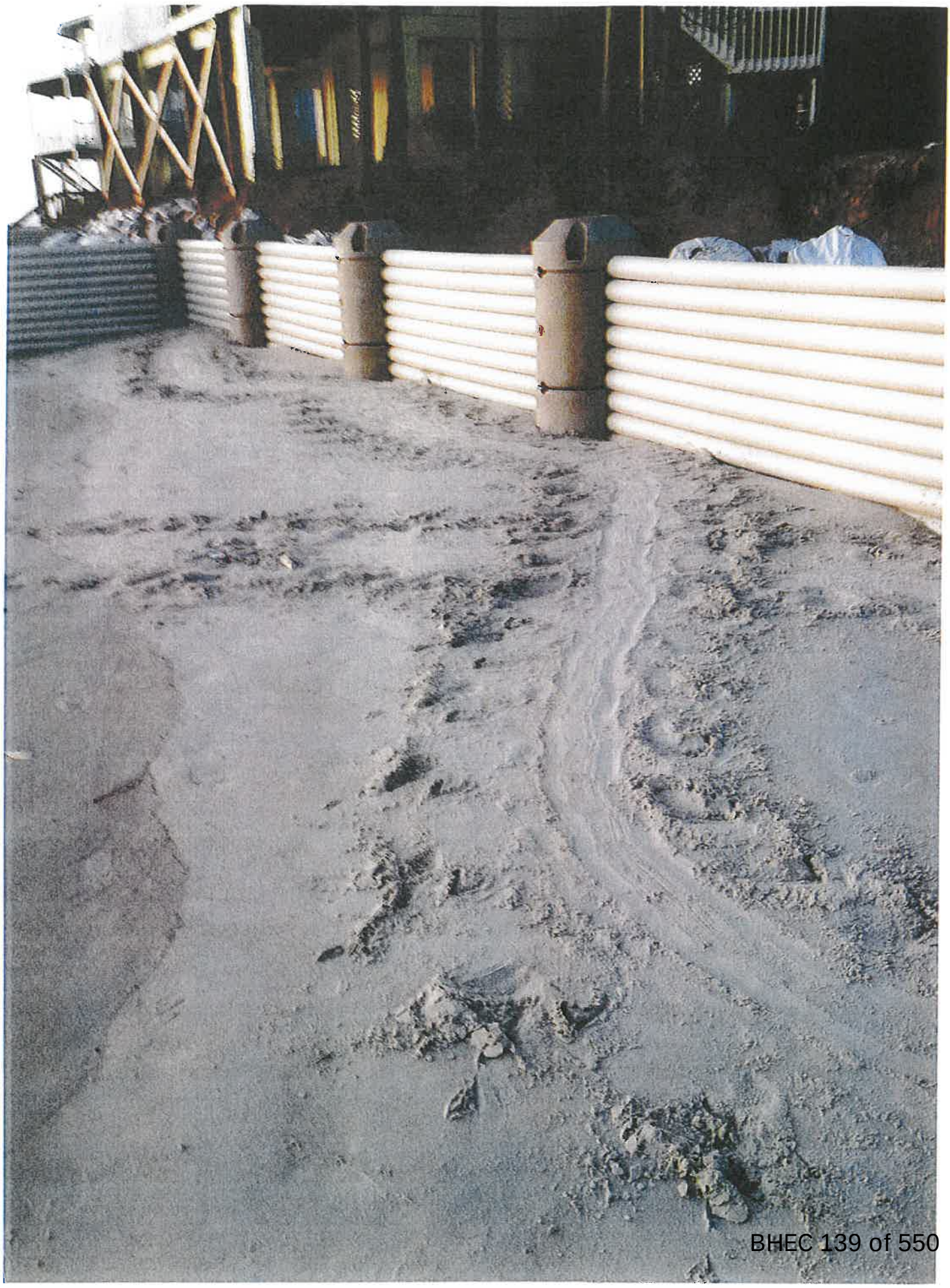
Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

Exhibit B



South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
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803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

South Carolina Department of
Natural Resources

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Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

July 16, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Beachwood East, Wild Dunes

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at the Isle of Palms. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading than the installation at Ocean Club and more extreme loading as Harbor Island.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) The WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Fran Nolan at 843.838.4878 (home) and 803.238.6256 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
843.953.9399 Fax
Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

May 7, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Wave Dissipation System (WDS) Study at Harbor Island

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation and study of a WDS along the shoreline at Harbor Island. The purpose of the study is to determine and describe the performance of the WDS under less extreme loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
843.953.9399 Fax
Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

April 9, 2015

Ms. Mary Hope Green
U. S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: P/N SAC-2015-00216-2NG, Ocean Club HOA, Wave Dissipation System (WDS) Pilot Study Continuation

Dear Ms. Green:

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the above referenced project and offer the following for your consideration.

The proposed project involves the installation of a WDS along the shoreline at The Ocean Club on the Isle of Palms. The project is associated with a continuation of a pilot study conducted by the Citadel to monitor the performance of the system in response to cycles of wave loading.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The use of this system along South Carolina's coast could result in negative impacts to nesting sea turtles. This most recent study attempt represents the second extension of this study and involves a more extensive structure with various modifications. During the initial and extended study phases of this project, the structure installed was subject to numerous modifications and required adjustments such as the placement of sandbags and sand around and behind the structure. The need for such adjustments indicates that the device on its own is not

functioning effectively to protect the shoreline and that additional modification and more extensive structures will be necessary. An Emergency Order for the placement of sandbags was recently issued by The Department of Health and Environmental Control for this same section of shoreline.

DNR is concerned with the continued use of this system on the beach for study purposes. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) That the WDS is permitted as a temporary structure and that it is removed in its entirety at the end of the study period. The study period for this project should be defined and limited to the minimum necessary in determining the effectiveness of the current structure design.

2) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

3) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

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Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

September 11, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is evaluating a report on the Wave Dissipation System (WDS), an experimental project conducted by the Citadel located in Wild Dunes, Isle of Palms, SC. to determine whether or not success is demonstrated and if the WDS causes material harm to the flora, fauna or physical resources of the area under Section 48-30-130(D)(2) of the 1976 Code. Per your request, we are providing the following comments regarding potential impacts of this WDS on important natural resources.

The DNR has a number of concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

Our Department has serious concerns regarding the widespread use of this system on the beachfront in areas utilized for nesting by sea turtles. The unlimited use of this system along South Carolina's coast could result in significant, negative impacts to nesting sea turtles. To avoid these impacts, this WDS should only be used in highly erosional areas where sea turtle nesting does not occur.

The DNR appreciates the opportunity to provide comments on the proposed WDS. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

South Carolina Department of
Natural Resources

PO Box 12559
Charleston, SC 29422
843.953.9003 Office
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Daviss@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

March 20, 2014

Mr. Blair Williams
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

Re: Wave Dissipation System (WDS), Seascape Wild Dunes,
Isle of Palms, Charleston County, SC

Dear Mr. Williams:

The S.C. Department of Natural Resources (SCDNR) understands that your agency is considering approval for an extension of an experimental project to further study a Wave Dissipation System (WDS) developed by Mr. Deron Nettles of SI Systems, LLC. Through conversations with you and Mr. Nettles, we understand that the initial study revealed some shortcomings with the originally installed WDS and that the purpose of this extended experiment is to gather data on a WDS with a stronger design and different configuration. Per your request, we are providing the following comments for your consideration.

The DNR has a number of questions and concerns regarding the proposed WDS, especially as it relates to the installation and maintenance of this system during sea turtle nesting season (May1 – October 31). The newly designed system consists of eight foot wide panels standing six feet above the beach elevation. A total of 23 panel units will be used to create a 120 foot front wall and a 32 foot wing wall at each end for a total WDS length of 184 feet. Twenty four piles will be embedded 10 to 12 feet into the beach to support the WDS. The WDS will be placed 50' seaward of the existing erosional scarp.

In its current design, the proposed WDS would form an impenetrable barrier to nesting sea turtles and emerging hatchlings. The installation and maintenance of this system in place during turtle nesting season could deter female turtles from nesting or block access to the beach. In the event of successful nesting behind the WDS, the WDS would act as a barrier to hatchlings attempting to reach the ocean. There is also the potential for hatchlings to become trapped in marine debris resulting from WDS damage or destruction.

While the DNR would prefer that the WDS not be installed or maintained in place during sea turtle nesting season, we recognize the benefits of gathering additional information on the potential impacts and effectiveness of this system. We also recognize the erosional state of the shoreline in this area and the need for emergency protection measures at the project site. In an effort to avoid and minimize potential impacts to sea turtles we ask that the following conditions be given consideration.

1) Provided the WDS is maintained intact and in good repair for the life of the study. The WDS is visually monitored on a daily basis to ensure structure stability. In the event the system is damaged or destroyed, all debris is recovered and removed immediately. If at any time during the study adverse impacts occur to nesting sea turtles or hatchlings the WDS is removed in its entirety.

2) During the turtle nesting season, the research team is in direct contact with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) throughout project construction and for the duration of the project. NPPL are consulted each morning on a daily basis prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult sea turtle is encountered, all work ceases and the NPPL is contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843.953.9052. The NPPL contact for this area is Mary Pringle at 843.886.8733 (home) and 843.697.8733 (cell).

The DNR appreciates the opportunity to provide comments on the proposed WDS and is interested in receiving a copy of the study results when available. If you have any questions regarding these comments please feel free to contact me.

Sincerely,

Susan F. Davis

Susan F. Davis
Coastal Environmental Coordinator

D H E C
PROMOTE PROTECT PROSPER
Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Ms. Lona Vest
Property Management Services
1340-G Ben Sawyer Blvd.
Mt. Pleasant, SC 29464

Dear Ms. Vest,

As a beachfront property manager and a previous holder of an emergency order issued by the S.C. Department of Health and Environmental Control (Department), we are writing to inform you of recent changes that will affect the standards and conditions under which future emergency orders will be issued. During the 2016 session of the S.C. General Assembly, statutory and regulatory amendments were approved related to permitting in the beaches and beach/dune critical areas of the coastal zone. These changes to the process for emergency orders were included in S.C. Code of Laws §48-39-130(D)(1) and S.C. Code of Regulation Chapter 30 (Attachment 1). Specifically, the revised language related to emergency orders for the installation of sandbags includes a new bonding requirement, and provides for an adjusted timeframe and additional standards for the use of sandbags.

The revisions are based on the recommendations of two broad-based stakeholder committees, the Blue Ribbon Committee on Shoreline Management and the Shoreline Change Advisory Committee. The Shoreline Change Advisory Committee was a multi-year initiative started in 2007 to examine science and policy issues related to beachfront management in South Carolina. In 2010, the Department's Board appointed a Blue Ribbon Committee on Shoreline Management (BRC) and charged the Committee with developing specific recommendations to guide the stewardship of the State's beachfront shorelines. The BRC, comprised of representative stakeholders, elected officials, and leading legal and academic experts, worked over two years to evaluate the previous two decades of experiences under the South Carolina Beachfront Management Act (1976 Code Section 48-39-250 et seq.). They examined current conditions, considered outcomes of the Shoreline Change Advisory Committee, and recommended improvements in the management of the State's beachfront jurisdictional area. These recent statutory and regulatory changes are based on the BRC's final recommendations.

The Department has strongly encouraged recipients of emergency orders to work with their neighbors and/or local municipalities to develop long term renourishment plans to address ongoing erosional conditions along the beachfront. Under the new requirements, recipients of emergency orders for the installation of sandbags will be allowed to maintain sandbags under an issued order for up to one hundred twenty (120) days. Emergency orders may only be extended to allow for additional time if a broad-based plan for renourishment is submitted to the Department by the property owner within those one hundred twenty (120) days. If the plan is acceptable, additional time shall be provided for a renourishment permit application to be submitted and evaluated by the Department, and for renourishment work to commence. If the Department denies the renourishment permit application, the sandbags will be required to be removed within ninety days of the final agency decision, including all appeals. Details regarding the timeframe for sandbag use is provided in the attached text of Regulation 30-15(H) and displayed on the flowchart provided (Attachment 2).

To ensure sandbags are not abandoned, recipients of emergency orders for the installation of sandbags will now be required to provide a secured bond to ensure that the expense of removal is not transferred to the State or the general public. Once an emergency order for sandbags is issued, the property owner may proceed with the installation of sandbags while the bonding process is underway. Within fifteen (15) days of receipt of the issued emergency order, the property owner must provide the Department with three written quotes that reasonably estimate the cost of the removal of all sandbags under the order. Based on these quotes, the Department will determine the amount of the required bond and notify the property owner of the amount of the bond to be secured. The property owner must obtain the bond and provide a copy to the Department within ten (10) days of the notification.

These revisions were effective June 24, 2016 and as such, must be included in any emergency orders issued after that date. For more information or if you have any questions regarding these new requirements, please feel free to contact me at (843) 953-0256 or dinovorg@dhec.sc.gov.

Sincerely,

M. Rheta S. DiNovo

Rheta G. DiNovo, Director
Regulatory Programs Division

Attachment 1

S.C. Code of Laws §48-39-130(D)(1)

Section 48-39-130(D)(1) of the 1976 Code

"Section 48-39-130. (D)(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the State, acting to protect the public health and safety, upon notification to the department. However, with regard to the beach and dune critical area, the following techniques or a combination thereof, shall be used in accordance with guidelines provided by the department are allowed pursuant to this item:

(a) sandbags, provided that a bond is supplied to reasonably estimate and cover the cost of removal;
(b) sandscraping;
(c) renourishment;
(d) any other technology, methodology, or structure pursuant to Section 48-39-320(C), provided that:
  (i) the emergency order for use is only issued by the department; and
  (ii) a bond is supplied to reasonably estimate and cover the cost of removal; or
(e) a combination of these techniques."

S.C. Code of Regulations Chapter 30

R.30-1.D(20) definition of Emergency Orders:
(20) Emergency Orders - orders issued in response to an emergency as defined in Section 48-39-10(U), by the Department or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, renourishment, or a combination of them, in accordance with R.30-5 and R.30-15.H, is allowed pursuant to emergency orders.

R.30-5.A(1):
(1) The accomplishment of emergency orders issued by the Department or by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, renourishment, or a combination of them is allowed, in accordance with R.30-5.B and R.30-15.H.

R.30-5.B:
B. Notification of Emergency Orders to the Department:

(1) As required in R.30-5.A(1) and R.30-15.H, emergency orders for sandbags, sand scraping or renourishment may be issued by an appointed official of a county or municipality or of the state provided:
  (a) the emergency conditions conform with the definition of emergency in Section 48-39-10(U);
  (b) the order is issued to protect health, safety or resources of the residents of the State as provided in Section 48-39-10(U); and
  (c) the order is issued in accordance with R.30-15.H.

(2) The Department must be notified of the issuance of an emergency order by an appointed official of a county or municipality or of the state. Notification to the Department must be made in writing prior to commencement of the activity, if possible, and must state the following:
  (a) the nature of the emergency;
  (b) the substance of the emergency order;
  (c) the time the order will be issued, or if circumstances preclude prior notice, when the order was issued;
  (d) the name of the local official executing the order and the authority under which that person is acting;
  (e) the location of the activity ordered;
  (f) the estimate of when such order shall be withdrawn.

(3) The Department shall be notified within seventy-two hours of the issuance of the emergency order. If the Department is not notified the official issuing such order or ordering such emergency action shall be in violation of the Act and these rules and regulations. Within seventy-two hours after the issuance of the emergency order, the official ordering the emergency action shall put the elements under R.30-5.B(2)(a)-(f) in writing and file them with the Department.

(4) The official issuing the emergency order shall be deemed in violation of the Act if the emergency conditions do not conform with the definition of emergency in Section 48-39-10(U).

R.30-13.Q(1):

(1) Golf Courses are allowed seaward of the baseline because they can adjust to a changing shoreline more readily than other types of land uses. The use of sandbags is allowed as temporary protection for golf courses located seaward of the baseline if the golf course existed prior to May 24, 1991 and if the emergency condition conforms with the definition of emergency in Section 48-39-10(U), in accordance with R.30-15.H(1). Sand scraping or renourishment may be used as temporary protection for golf courses in accordance with R.30-15.H(4) and (5).

R.30-15.F(4):

(4) In determining whether or not a permit is contrary to the public health, safety or welfare, the Department shall consider:

(a) whether or not the proposed structure would be constructed on renourished beach;

(b) the erosion rate at the site;

(c) how soon the structure will be located on the active beach;

(d) whether or not the proposed structure meets American National Standards Institute building standards; and/or

(e) the potential cumulative effect that similar structures will have upon the beach/dune system.

R.30-15.H:

H. Emergency Orders: Emergency situations before or after a storm event may prompt the Department, or an appointed official of a county or municipality or of the state to issue emergency orders under R.30-5, allowing property owners to construct temporary barriers against wave uprush. A structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure. In an effort to protect Loggerhead turtle nesting sites, emergency orders issued between April 15th and November 1st must be reviewed by the Department prior to actual performance of the activity authorized by the emergency order. The U.S. Army Corps of Engineers must be notified within seventy-two hours of the issuance of an emergency order by the Department if the Department issued the emergency order. If the emergency order is issued by an appointed official such notification must be accomplished by the issuing official. The property owner or other recipient of the emergency order must obtain any additional permit(s) and agency review(s) that may be required by other local, state or federal agencies. All required permits and reviews must be obtained prior to the commencement of work pursuant to the issued emergency order. Unless otherwise approved by the Department, emergency sandbagging, sand scraping and renourishment shall be performed using the criteria established in this section. The Department may apply any requirements under this section to any Department-approved technology that is authorized under an emergency order.

(1) Emergency orders for sandbags may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sandbags shall only be used to construct temporary protection for existing habitable structures and critical infrastructure if the Department or appointed official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U), or as allowed in R.30-13.Q(1). In this section, "critical infrastructure" shall mean utilities, roadways and associated infrastructure necessary to provide for public health and safety, communication, and transportation.

(2) Emergency orders for sandbags shall be subject to the following process:

(a) The Department or an appointed official of a county or municipality or of the state may issue emergency orders for areas specifically included under a state emergency declaration or at the request of a local government or property owner.

(b) Within one hundred twenty days of the issuance of an emergency order for sandbags, the property owner may provide the Department with evidence that their community has a feasible and financially viable renourishment plan for the affected area that is consistent with their approved Local Comprehensive Beachfront Management Plan.

(c) If the property owner has not provided the Department with an acceptable plan for renourishment within one hundred twenty days of the issuance of an emergency order for sandbags, then the emergency order shall expire at the end of the one hundred twentieth day, and the sandbags shall be removed at the property owner's expense.

(d) If the property owner's plan is acceptable and calls for renourishment, then a renourishment permit application shall be submitted to the Department within eighteen months of the issuance of the emergency order.

(i) If the Department approves the renourishment permit, sandbags shall be allowed to remain in place for up to twelve months after the permit is issued to allow sufficient time for the project to be completed, but must be removed at the property owner's expense prior to the placement of renourishment sand at the property, or at the end of the twelve month period, whichever occurs first.

(ii) If the Department denies the renourishment permit application, the sandbags shall be removed within ninety days of the final agency decision, including all appeals, at the property owner's expense.

(iii) If a renourishment permit application is not submitted to the Department within eighteen months of the issuance of the emergency order, the emergency order shall expire at the end of the eighteenth month, and the sandbags shall be removed at the property owner's expense.

(3) To maintain the temporary nature that is intended for the use of sandbags, the following criteria shall be used when issuing emergency orders for sandbags:

(a) The bags shall be commercially manufactured for the purpose of holding sand. Biodegradable bags may be required if deemed appropriate by the Department.

(b) The bags, when filled, shall be a maximum size of one cubic yard.

(c) The bags may be placed no farther seaward than is necessary to protect the existing habitable structure, critical infrastructure or golf course qualified under R.30-13.Q(1). In no case may sandbags be used to protect a dune. Sandbags may not retard normal shoreline movement unless used to protect an existing habitable structure, critical infrastructure or golf course qualified under R.30-13.Q(1).

(d) All sandbags are to be placed parallel to the shoreline. Excavation shall not be allowed below existing beach grade. The toe of the sandbags shall not be buried. At no time shall the sandbags be buried or covered with sand.

(e) Sandbags shall generally be limited to a maximum height of six feet above the beach. The sandbags shall be stacked at an angle no steeper than forty-five degrees.

(f) The Department may consider site specific engineering reports which will improve the effectiveness of sandbag placement for site specific situations.

(g) Sandbag fill material must be from an upland source and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand may be placed in the bags.

(h) The property owner is responsible for the day-to-day maintenance of the sandbags to ensure that they remain in the location authorized by the emergency order, above grade and in good repair. Failure to maintain the sandbags may result in the Department requiring the removal of the sandbags at the property owner's expense.

(i) A copy of the issued emergency order shall be in the possession of anyone performing the placement of sandbags.

(4) Emergency orders for sand scraping may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sand scraping may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and

emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria shall be used when issuing emergency orders for sand scraping:

(a) Sand scraping may only be ordered and performed to protect existing structures. Sand scraping shall not be allowed in front of erosion control structures unless it can be proven that the erosion control structure is itself in danger of collapsing and is within ten feet of the habitable structure.

(b) Sand scraping may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

(c) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level.

(d) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six feet above grade or twenty feet in width as measured from dune toe to dune toe.

(e) No sand may be placed landward of an existing, functional erosion control device.

(f) Sand scraping may be performed one time only per property for each emergency order issued by the local official without prior approval by the Department.

(g) A copy of the issued emergency order shall be in the possession of anyone performing sand scraping.

(h) Sand scraping activities shall generally be accomplished through private or local funding unless a state of emergency is declared, then state funding is not precluded.

(5) Emergency orders for renourishment may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Renourishment may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria shall be used when issuing emergency orders for renourishment:

(a) Renourishment sand must originate from an upland source and be approved by the Department as compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material.

(b) Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

(c) Sand may be stabilized with sand fencing and beach vegetation pursuant to the permitting requirements in R.30-13.L.

(d) A copy of the issued emergency order shall be in the possession of anyone performing authorized renourishment activities.

(e) Renourishment activities conducted under an emergency order may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

(f) Renourishment activities conducted under an emergency order shall generally be accomplished through private or local funding unless a state of emergency is declared, then state funding is not precluded.

Attachment 2

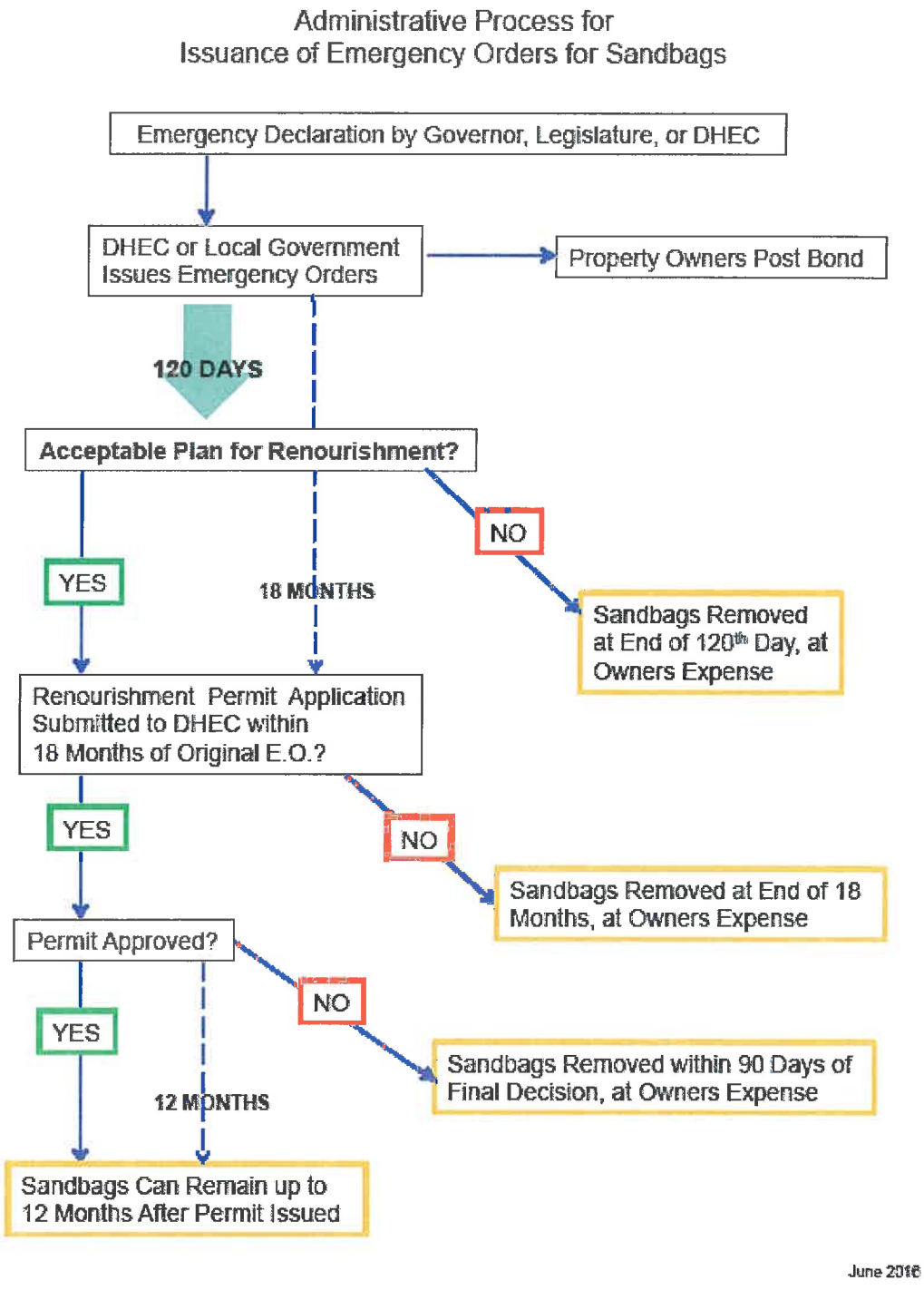

EXHIBIT B-1

See page 5 of 7

South Carolina Legislature

34.48 found 1 time.

PLEASE NOTE

Text printed in *italic*, **boldface** indicates sections vetoed by the Governor.

* Indicates those vetoes sustained by the General Assembly.

** Indicates those vetoes overridden by the General Assembly.

Part 1B section 34 J04-DEPARTMENT OF HEALTH AND

2015-2016 Appropriation Act

SECTION 34 - J04-DEPARTMENT OF HEALTH AND

ENVIRONMENTALCONTROL

34.1. (DHEC: County Health Departments Funding) Out of the appropriation provided in this section for "Access to Care", the sum of $25,000 shall be distributed to the county health departments by the commissioner, with the approval of the Board of Department of Health and Environmental Control, for the following purposes:

(1) To insure the provision of a reasonably adequate public health program in each county.

(2) To provide funds to combat special health problems that may exist in certain counties.

(3) To establish and maintain demonstration projects in improved public health methods in one or more counties in the promotion of better public health service throughout the State.

(4) To encourage and promote local participation in financial support of the county health departments.

(5) To meet emergency situations which may arise in local areas.

(6) To fit funds available to amounts budgeted when small differences occur.

The provisions of this proviso shall not supersede or suspend the provisions of Section 13-7-30 of the 1976 Code.

34.2. (DHEC: County Health Units) General funds made available to the Department of Health and Environmental Control for the allocation to the counties of the State for operation of county health units be allotted on a basis approved by the Board of the Department of Health and Environmental Control. The amount ofgeneral funds appropriated herein for Access to Care shall be allocated on a basis such that no county budget shall receive less than the amount received in the prior fiscal year, except when instructed by theExecutive Budget Office or the General Assembly to reduce funds within the department by a certain percentage, the department may unilaterally reduce the county health units up to the stipulated percentage.

34.3. (DHEC: Camp Burnt Gin) Private donations or contributions forthe operation of Camp Burnt Gin shall be deposited in a restricted account.These funds may be carried forward and shall be made available as needed to fund the operation of the camp. Withdrawals from this restricted account must be in accordance with approved procedures.

34.4. (DHEC: Children's Rehabilitative Services) The Children's Rehabilitative Services shall be required to utilize any available financial resources including insurance benefits and/or governmental assistance programs, to which the child may otherwise be entitled in providing and/or arranging for medical care and related services to physically handicapped children eligible for such services, as a prerequisite to the child receiving such services.

34.5. (DHEC: Cancer/Hemophilia) Notwithstanding any other provisions of this act, the funds appropriated herein for prevention, detection and surveillance of cancer as well as providing for cancer treatment services, $545,449 and the hemophilia assistance program, $1,186,928 shall not be transferred to other programs within the agency and when instructed by the Executive Budget Office or the General Assembly to reduce funds within the department by a certain percentage, the department may not act unilaterally to reduce the funds for any cancer treatment program and hemophilia assistance program provided for herein greater than such stipulated percentage.

34.6. (DHEC: Local Health Departments) Counties of the state will be relieved of contribution requirements for salary, fringe benefits and travel reimbursement to local health departments. The amount of $5,430,697 is appropriated for county health department salaries, fringe benefits and travel. These funds and other state funds appropriated for county health units may, based upon need, be utilized in either salary or travel categories. Each county shall provide all other operating expenses of the local health department in an amount at least equal to that appropriated for operations for each county in Fiscal Year 1981. In the event any county makes uniform reductions in appropriations to all agencies or departments for maintenance and operations, exclusive of salaries and fringe benefits, a like reduction shall be made in funds appropriated for the operating expenses of the local health department.

34.7. (DHEC: Insurance Refunds) The Department of Health and Environmental Control is authorized to budget and expend monies resulting from insurance refunds for prior year operations for case services in family health.

34.8. (DHEC: Emergency Medical Services) Funds appropriated herein for Emergency Medical Services, shall be allocated for the purpose of improving and upgrading the EMS system throughout the state. The monies allocated to the Counties are for the purpose of improving or upgrading the local EMS system through the licensed ambulance services, the monies allocated to the EMS Regional Councils are for the administration of training programs and technical assistance to local EMS organizations and county systems. All additional funds are to be allocated as follows: to the counties at the ratio of eighty-one percent of the additional funds appropriated herein, to the EMS Regions at a ratio of twelve percent of the additional funds appropriated herein and to the state EMS Office at the ratio of seven percent of the additional funds appropriated herein. The Department of Health and Environmental Control shall develop criteria and guidelines and administer the system to make allocations to each region and county within the state, based on demonstrated need and local match. Funds appropriated to Emergency Medical Services shall not be transferred to other programs within the department's budget. Unexpended funds appropriated to the program may be carried forward to succeeding fiscal years and expended for administrative and operational support and for temporary and contract employees to assist with duties related to improving and upgrading the EMS system throughout the state, including training of EMS personnel and administration of grants to local EMS providers. In addition, when instructed by the Executive Budget Office or the General Assembly to reduce funds by a certain percentage, the department may not reduce the funds appropriated for EMS Regional Councils or Aid to Counties greater than such stipulated percentage.

34.9. (DHEC: Rape Violence Prevention Contract) Of the amounts appropriated in Rape Violence Prevention,$1,103,956 shall be used to support programmatic efforts of the state's rape crisis centers with distribution of these funds based on theStandards and Outcomes for Rape Crisis Centers and each center's accomplishment of a preapproved annual action plan. Forthe current fiscal year, the department shall not reduce these contracts below the current funding level.

34.10. (DHEC: Sickle Cell Blood Sample Analysis) $16,000 is appropriated in Independent Living for the Sickle Cell Program for Blood Sample Analysis and shall be used by the department to analyze blood samples submitted by the four existing regional programs - Region I, Barksdale Sickle Cell Anemia Foundation in Spartanburg; Region II, Clark Sickle Cell Anemia Foundation in Columbia; Region III, Committee on Better Racial Assurance Hemoglobinopathy Program in Charleston; and the Orangeburg Area Sickle Cell Anemia Foundation.

34.11. (DHEC: Sickle Cell Programs) $761,233 is appropriated for Sickle Cell program services and shall be apportioned as follows:

(1) sixty-seven percent is to be divided equitably between the existing Community Based Sickle Cell Programs located in Spartanburg, Columbia, Orangeburg, and Charleston; and

(2) thirty-three percent is for the Community Based Sickle Cell Program at DHEC.

The funds shall be used for providing prevention programs, educational programs, testing, counseling and newborn screening. The balance of the total appropriation must be used for Sickle Cell Services operated by the Independent Living program of DHEC. The funds appropriated to the community based sickle cell centers shall be reduced to reflect any percent reduction assigned to the Department of Health and Environmental Control by theExecutive Budget Office; provided, however, that the department may not act unilaterally to reduce the funds for the Sickle Cell program greater than such stipulated percentage. The department shall not be required to undertake any treatment, medical management or health care follow-up for any person with sickle cell disease identified through any neonatal testing program, beyond the level of services supported by funds now or subsequently appropriated for such services. No funds appropriated for ongoing or newly established sickle cell services may be diverted to other budget categories within the DHEC budget. Forthe current fiscal year, the department shall not reduce these funds below the current funding level.

34.12. (DHEC: Genetic Services) The sum of $104,086 appearing under the Independent Living program of this act shall be appropriated to and administered by the Department of Health and Environmental Control for the purpose of providing appropriate genetic services to medically needy and underserved persons. Such funds shall be used by the department to administer the program and to contract with appropriate providers of genetic services. Such services will include genetic screening, laboratory testing, counseling, and other services as may be deemed beneficial by the department, and these funds shall be divided equally among the three Regional Genetic Centers of South Carolina, composed of units from the Medical University of South Carolina, the University of South Carolina School of Medicine, and the Greenwood Genetic Center.

34.13. (DHEC: Revenue Carry Forward Authorization) The Department of Health and Environmental Control is hereby authorized to collect, expend, and carry forward revenues in the following programs: Sale of Goods (confiscated goods, arm patches, etc.), sale of meals at Camp Burnt Gin, sale of publications, brochures, Spoil Easement Areas revenue, performance bond forfeiture revenue for restoring damaged critical areas, beach renourishment appropriations, photo copies and certificate forms, including but not limited to, pet rabies vaccination certificate books, sale of listings and labels, sale of State Code and Supplements, sale of films and slides, sale of maps, sale of items to be recycled, including, but not limited to, used motor oil and batteries, sale and/or licensing of software products developed and owned by the Department, and collection of registration fees for non-DHEC employees. Any unexpended balance carried forward must be used for the same purpose.

34.14. (DHEC: Medicaid Nursing Home Bed Days) Pursuant to Section 44-7-84(A) of the 1976 Code, the maximum number of Medicaid patient days for which the Department of Health and Environmental Control is authorized to issue Medicaid nursing home permits is 4,452,015.

34.15. (DHEC: Health Licensing Fee) Funds resulting from an increase in the Health Licensing Fee Schedule shall be retained by the department to fund increased responsibilities of the health licensing programs. Failure to submit a license renewal application or fee to the department by the license expiration date shall result in a late fee of $75 or twenty-five percent of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time period specified by the department shall result in enforcement actions. The department may waive any or all of the assessed late fees in extenuating circumstances, as long as it is with public knowledge.

34.16. (DHEC: Infectious Waste Contingency Fund) The Department of Health and Environmental Control is authorized to use not more than $75,000 from the Infectious Waste Contingency Fund per year for personnel and operating expenses to implement the Infectious Waste Act.

34.17. (DHEC: Nursing Home Medicaid Bed Day Permit) When transfer of a Medicaid patient from a nursing home is necessary due to violations of state or federal law or Medicaid certification requirements, the Medicaid patient day permit shall be transferred with the patient to the receiving nursing home. The receiving facility shall apply to permanently retain the Medicaid patient day permit within sixty days of receipt of the patient.

34.18. (DHEC: Mineral Sets Revenue) The department is authorized to charge a reasonable fee for mineral sets. Funds generated from the sale of mineral sets may be retained by the department in a revolving account with a maximum carry forward of $2,000 and must be expended for mineral set supplies and related mining and reclamation educational products.

34.19. (DHEC: Spoil Easement Areas Revenue) The department is authorized to collect, retain and expend funds received from the sale of and/or third party use of spoil easement areas, for the purpose of meeting the State of South Carolina's responsibility for providing adequate spoil easement areas for the Atlantic Intracoastal Waterway in South Carolina.

34.20. (DHEC: Per Visit Rate) The SC DHEC is authorized to compensate nonpermanent, part-time employees on a fixed rate per visit basis. Compensation on a fixed rate per visit may be paid to employees for whom the department receives per visit reimbursement from other sources. These individuals will provide direct patient care in a home environment. The per visit rate may vary based on the discipline providing the care and the geographical location of services rendered. Management may pay exempt or nonexempt employees as defined by the Fair Labor Standards Act only when they are needed to work. Individuals employed in this category may exceed twelve months, but are not eligible for State benefits except for the option of contributing to the State Retirement System.

34.21. (DHEC: Allocation of Indirect Cost and Recoveries) The department shall continue to deposit in the general fund all indirect cost recoveries derived from state general funds participating in the calculation of the approved indirect cost rate. Further administration cost funded with other funds used in the indirect cost calculationmay, based on their percentage, be retained by the agency to support the remaining administrative costs of the agency.

34.22. (DHEC: Permitted Site Fund) The South Carolina Department of Health and Environmental Control may expend funds as necessary from the permitted site fund established pursuant to Section 44-56-160(B)(1), for legal services related to environmental response, regulatory, and enforcement matters, including administrative proceedings and actions in state and all federal courts.

34.23. (DHEC: Shift Increased Funds) The Director is authorized to shift increased appropriated funds in this act to offset shortfalls in other critical program areas.

34.24. (DHEC: Health Licensing Monetary Penalties) In the course of regulating health care facilities/services, the Bureau of Health Facilities Licensing (BHFL) assesses civil monetary penalties against nonconforming providers. BHFL shall retain up to the first $50,000 of civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that division. These funds shall be separately accounted for in the department's fiscal records.

34.25. (DHEC: Health Facility Monetary Penalties) In the course of regulating health care facilities/services, the Division of Construction/Fire & Life Safety (DCFLS) assesses civil monetary penalties against nonconforming providers. DCFLS shall retain up to the first $100,000 of civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that division. These funds shall be separately accounted for in the department's fiscal records. Regulations for nursing home staffing for Fiscal Year 2015-16 must (1) provide a minimum of one and sixty-three hundredths (1.63) hours of direct care per resident per day from the non-licensed nursing staff; and (2) maintain at least one licensed nurse per shift for each staff work area. All other staffing standards and non-staffing standards established in Standards for Licensing Nursing Homes: R61-17, Code of State Regulations, must be enforced.

34.26. (DHEC: Radiological Health Monetary Penalties) In the course of regulating health care facilities/services, the Bureau of Radiological Health (BRH) assesses civil monetary penalties against nonconforming providers. BRH shall retain up to the first $30,000 of civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that Bureau. These funds shall be separately accounted for in the department's fiscal records.

34.27. (DHEC: Prohibit Use of Funds) The Department of Health and Environmental Control must not use any state appropriated funds to terminate a pregnancy or induce a miscarriage by chemical means.

34.28. (DHEC: Meals in Emergency Operations) The cost of meals may be provided to state employees who are required to work during actual emergencies and emergency simulation exercises when they are not permitted to leave their stations.

34.29. (DHEC: Compensatory Payment) In the event the President of the United States has declared a state of emergency or the Governor has declared a state of emergency in a county in the State, Fair Labor Standards Act exempt employees of the department may be paid for actual hours worked in lieu of accruing compensatory time, at the discretion of the agency Director, and providing funds are available.

34.30. (DHEC: Beach Renourishment and Monitoring and Coastal Access Improvement)If state funds are made available or carried forward from any general revenue, capital, surplus or bond funding appropriated to the department for beach renourishment and maintenance, the department shall be able to expend not more than $100,000 of these funds annually to support annual beach profile monitoring. Additional funds made available or carried forward for beach renourishment projects that are certified by the department as excess may be spent forbeach renourishment and departmental activities that advance the policy goals contained in the State Beachfront Management Plan, R.30-21.

34.31. (DHEC: South Carolina State Trauma Care Fund) Of the funds appropriated to the South Carolina State Trauma Care Fund, $2,268,885 shall be utilized for increasing the reimbursement rates for trauma hospitals, for trauma specialists' professional fee, for increasing the capability of EMS trauma care providers from counties with a high rate of traumatic injury deaths to care for injury patients, and for support of the trauma system, based on a methodology as determined by the department with guidance and input from the Trauma Council as established in Section 44-61-530 of the South Carolina Code of Laws. The methodology to be developed will include a breakdown of disbursement of funds by percentage, with a proposed seventy-six and one half percent disbursed to hospitals and trauma physician fees, sixteen percent of the twenty-one percent must be disbursed to EMS providers for training EMTs, Advanced EMTs and paramedics by the four regional councils of this state and the remaining five percent must be disbursed to EMS providers in counties with high trauma mortality rates, and two and one half percent allocated to the department for administration of the fund and support of the trauma system. The Department of Health and Environmental Control shall promulgate regulations as required in Section 44-61-540 of the 1976 Code for the administration and oversight of the Trauma Care Fund.

34.32. (DHEC: Pandemic Influenza) The Department of Health and Environmental Control shall assess South Carolina's ability to cope with a major influenza outbreak or pandemic influenza and maintain an emergency plan and stockpile of medicines and supplies to improve the state's readiness condition. The department shall report on preparedness measures to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor by November first, each year. The department, in conjunction with the Department of Health and Human Services, is authorized to establish a fund for the purpose of developing an emergency supply, stockpile, and distribution system of appropriate antiviral, antibiotic, and vaccine medicines and medical supplies. In the event the United States Department of Health and Human Services makes available medicines or vaccines for purchase by states via federal contract or federally-subsidized contract or other mechanism, the department, with Executive Budget Office approval, may access appropriated or earmarked funds as necessary to purchase an emergency supply of these medicines for the State of South Carolina.

34.33. (DHEC: PharmacistServices) For the current fiscal year, provisions requiring that all department facilities distributing or dispensing prescription drugs be permitted by the Board of Pharmacy and that each pharmacy have a pharmacist-in-charge are suspended. Each Department

of Health and Environmental Control Public Health Region shall be required to have a permit to distribute or dispense prescription drugs. A department pharmacist may serve as the pharmacist-in-charge without being physically present in the pharmacy. The department is authorized to designate one pharmacist-in-charge to serve more than onedepartment facility. Only pharmacists, nurses, or physicians are allowed to dispense and provide prescription drugs/products/vaccinesfor conditions or diseases that the department treats, monitors, or investigates. In the event of a public health emergency or upon activation of the strategic national stockpile, other medications may be dispensed as necessary.

34.34. (DHEC: Coastal Zone Appellate Panel) The Coastal Zone Appellate Panel as delineated in Section 48-39-40 of the 1976 Code under the Department of Health and Environmental Control shall be suspended for the current fiscal year.

34.35. (DHEC: Rural Hospital Grants) Rural Hospital Grants funds shall be allocated to public hospitals in very rural or rural areas whose largest town is less than 25,000and whose licensed bed capacity does not exceedtwo hundred beds. Hospitals qualifying for the grants shall utilize such funds for any of the following purposes: (a) the development of preventive health programs, medical homes, and primary care diversion from emergency departments; (b) expanded health services, including physician recruitment and retention;(c) to improve hospital facilities; (d) activities involving electronic medical records or claims processing systems; (e) to enhance disease prevention activities in diabetes, heart disease, etc; and (f) activities to ensure compliance with State or Federal regulations.

34.36. (DHEC: Camp Burnt Gin) Notwithstanding any other provision of law, the funds appropriated to the department pursuant to Part IA, or funds from any other source, for Camp Burnt Gin must not be reduced in the event the department is required to take a budget reduction.

34.37. (DHEC: Metabolic Screening) The department may suspend any activity related to blood sample storage as outlined in Section 44-37-30 (D) and (E) of the 1976 Code, if there are insufficient state funds to support the storage requirements. In that event, the samples may be destroyed in a scientifically appropriate manner after testing. The department shall notify providers of the suspension within thirty days of its effective date.

34.38. (DHEC: Fetal Pain Awareness) (A) The department must utilize at least one hundred dollars to prepare printed materials concerning information that unborn children at twenty weeks gestation and beyond are fully capable of feeling pain and the right of a woman seeking an abortion to ask for and receive anesthesia to alleviate or eliminate pain to the fetus during an abortion procedure. The materials must be provided to each abortion provider in the State and must be placed in a conspicuous place in each examination room at the doctor's office. The materials must contain only the following information:

"Fetal Pain Awareness

An unborn child who is twenty weeks old or more is fully capable of experiencing pain. Anesthesia provided to a woman for an abortion typically offers little pain prevention for the unborn child. If you choose to end your pregnancy, you have a right to have anesthesia or analgesic administered to alleviate the pain to your unborn child during the abortion."

(B) The materials must be easily comprehendible and must be printed in a typeface large and bold enough to be clearly legible.

34.39. (DHEC: SCHIDS) From funds appropriated for Chronic Disease Prevention, the department shall establish a South Carolina Health Integrated Data Services (SCHIDS) program to disseminate data about prevalence, treatment and cost of disease from the South Carolina Health and Human Services Data Warehouse and in particular the Medicaid System. The purpose of the program is to educate communities statewide about improving health and wellness through lifestyle changes.

TheRevenue and Fiscal Affairs Office shall provide data needed by the SCHIDS program to fulfill its mission, and all state agencies and public universities involved in educating South Carolinians through public programs for the purpose of improving health and wellness shall communicate with the program in order to improve collaboration and coordination and the possible use of SCHIDS to assist in the evaluation of program outcomes.

Medicaid staff shall coordinate with the SCHIDS program staff to target Prevention Partnership Grant awards to those communities demonstrating a prevalence of chronic disease and/or lack of access to care.

34.40. (DHEC: Abstinence EducationContract)For the current fiscal year, funds made available to the State of South Carolina under the provisions of Title V, Section 510,may only be awarded to other entities through a competitive bidding process.

34.41. (DHEC: Immunizations) The department is authorized to utilize the funds appropriated for immunizations to hire temporary personnel to address periods of high demand for immunizations at local health departments.

34.42. (DHEC: Obesity) The Department of Health and Environmental Control is charged with addressing the public health of our citizens and shall be the convener and coordinator of the fight against Obesity in South Carolina. Because addressing the obesity epidemic requires behavioral, educational, systemic, medical, and community involvement, the following state agencies should use their best efforts to cooperate with the requests of the department and its partners to facilitate an environment that decreases body mass index (BMI): Department of Education; Department of Health and Human Services; Department of Social Services; Department of Mental Health; Medical University of South Carolina; University of South Carolina Arnold School of Public Health; Department of Parks, Recreation and Tourism; Department of Commerce; Department of Transportation; and Commission for the Blind.

In addition, school districts must provide the Department of Health and Environmental Control with information regarding their progress towards meeting certain provisions of the Student Health and Fitness Act of 2005, specifically: Section 59-10-10 regarding the average number of minutes students exercise weekly; Section 59-10-50 regarding the SC Physical Education Assessment; Section 59-10-310 regarding efforts to promote healthy eating patterns; Section 59-10-320 regarding assessment of school district health education programs; Section 59-10-340 regarding snacks in vending machines; and Section 59-10-360 regarding health curriculum. The department is given the authority to collect, compile and assess the progress of the State and the School Districts in meeting the goals of this act.

34.43. (DHEC: Residential Treatment Facilities Swing Beds) For Fiscal Year 2015-16 in coordination with the South Carolina Health Plan and to improve access for acute psychiatric beds as patient populations demand, Residential Treatment Facilities (RTF) may swing up toeighteen beds per qualifying facility to accommodate patients with a diagnosis of an acutepsychiatric disorder. In order to qualify to utilize swing beds a facility must meet the following criteria: the facility must currently have both licensed acute psychiatric and residential treatment facility beds, the RTF beds must meet the same licensure requirements as the existing licensed acute psychiatric beds, and any facility utilizing swing beds must keep the acute and RTF patient populations separate and distinct. The utilization of swing beds must also comply with all federal Centers for Medicare and Medicaid Services rules and regulations.

34.44. DELETED

34.45. (DHEC: Tuberculosis Outbreak) (A) Upon discovery of a tuberculosis outbreak, the Department of Health and Environmental Control may expend any funds available to the agency, for the purpose of surveillance, investigation, containment, and treatment activities related thereto.

(B) During an investigation of an index tuberculosis patient, the Department of Health and Environmental Control, through the South Carolina Health Alert Network, must notify the patient's community that a tuberculosis contact investigation is being conducted into the possible exposure to tuberculosis. This subsection only applies if the investigation of the patient has met all of the following criteria:

(1) abnormal chest x-rays;

(2) positive Acid Fast Bacilli (AFB) sputum results; and

(3) first round of contact investigation completed with results of individuals testing positive outside of the index patient's family.

(C) Upon being informed of or having reason to suspect a case of tuberculosis that is capable of transmitting tubercle bacilli at a school or child care center involving a student, teacher, employee, volunteer, or an individual working at the school or child care center for an employer providing services to the school or child care center, the department immediately shall notify:

(1) if the case is at a school, the principal, and the Superintendent of the school district if the school is a public school; and

(2) if the case is at a child care center, the director of the child care center; and

(D) When informing the principal of a school or the director of a child care center about a known or suspected case of tuberculosis that is capable of transmitting tubercle bacilli as provided for in subsection (C), the department shall provide:

(1) an update addressing the:

(a) status of the investigation, including the steps the department is taking to identify the source and extent of the exposure and the risks of additional exposure; and

(b) steps the school or child care center must take to assist the department in controlling the spread of the tuberculosis infection; and

(2) information and other resources to distribute to parents and guardians that discuss how to assist the department in identifying and managing the tuberculosis infection.

34.46. (DHEC: Abstinence-Until-Marriage Emerging Programs)(A) From the funds appropriated to DHEC in this act as a Special Item and titled "Abstinence-Until Marriage Emerging Programs" the department shall award a twelve month grant for abstinence-until-marriage emerging programs. This funding shall be awarded by the department only to nonprofit 501(c)(3) agencies meeting all the A-H Title V, Section 510 definitions of Abstinence Education.

(B) Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code.

(C) Applicants must provide a budget and budget narrative to the department that explains how the funds will be used.

(D) Prior to application, proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirements for abstinence-until-marriage education programs.

(E) The department shall determine and develop the necessary application for awards.

(F) The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

Organizations or individuals awarded grants must provide quarterly reports on expenditures and participation to the Department of Health and Environmental Control and the Department of Social Services within fifteen days of the end of each quarter.

(G) Grantees failing to submit reports within thirty days of the end of each quarter will be terminated.

34.47. (DHEC: Abstinence Until Marriage Evidence-Based Programs Funding) From the monies appropriated for the Continuation of Teen Pregnancy Prevention, contracts must be awarded to separate private, nonprofit 501(c)(3) entities to provide Abstinence Until Marriage teen pregnancy prevention programs and services within the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers, accredited by the Commission on Accreditation of Birth Centers on or before July 1, 2014, must register an on-call agreement and any transfer policies with the Department of Health and Environmental Control. The on-call agreement shall contain provisions which provide that the on-call physician is readily available to provide medical assistance either in person or by telecommunications or other electronic means, which means the physician must be within a thirty minute drive of the birthing center or hospital, must be licensed in the State of South Carolina, and shall provide consultation and advice to the birthing center at all times it is serving the public. Furthermore, a birthing center shall document in its practice guidelines and policies the ability to transfer care to an acute care hospital with obstetrical and newborn services and must demonstrate this by: (A) coordinated transfer care plans, protocols, procedures, arrangements, or through collaboration with one or more acute care hospitals with appropriate obstetrical and newborn services; and (B) admitting privileges at one or more hospitals with appropriate obstetrical and newborn services by a birthing center's consulting physician. The department shall require a $25.00 registration fee upon receipt and review of the agreements containing these provisions. Birthing centers registering on-call and transfer policies in accordance with this proviso shall be deemed by the department to be in compliance with Section 44-89-60(3) of the South Carolina Code and any implementing regulations for this fiscal year.

34.50. DELETED

34.51. (DHEC: Abortion Clinic Certification) Prior to January 31, 2015, a facility other than a hospital that is licensed and certified by the department to perform abortions must file a report with the department that provides the number of physicians that performed an abortion at the facility between July 1, 2014 and December 31, 2014, who did not have admitting privileges at a local certified hospital and staff privileges to replace on-staff physicians at the certified hospital and the percentage of these physician in relation to the overall number of physicians who performed abortions at the facility. The report must include a summation of any abortion that resulted in an outcome which required a level of aftercare that exceeds what is customarily provided by physicians in such cases in accordance with accepted medical practice and indicate whether or not the abortion was performed by a physician with admitting privileges at a local certified hospital and staff privileges to replace on-staff physicians at the certified hospital. Any summation of any abortion must not divulge any information that is privileged or required to be maintained as confidential by any provision of law. An applicable facility must remit a twenty-five dollar filing fee to the department for the report required by this provision.

34.52. (DHEC: Seawall Reconstruction/Repair) In the current fiscal year, the Department of Health and Environmental Control may issue a special permit for the reconstruction or repair of an existing erosion control device of at least four thousand contiguous linear feet that is located landward of an area which the department has granted a permit authorizing a renourishment project that does not qualify for public funding and the permit is active as of July 1, 2014. The department may only issue the permit if the seawall will be reconstructed or repaired with like material and the footprint of the replacement is no more than two feet from the footprint of the original. The department may charge a permit fee equal to the actual cost of issuing the permit.

34.53. (DHEC: Maternal Morbidity and Mortality Review Committee) (A) From the funds appropriated to or authorized for the Department of Health and Environmental Control in Fiscal Year 2015-16, the department shall establish a Maternal Morbidity and Mortality Review Committee to review maternal deaths and to develop strategies for the prevention of maternal deaths. The committee must be multidisciplinary and composed of members deemed appropriate by the department. The committee also may review severe maternal morbidity. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and performing other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this provision.

(B) The committee shall:

(1) identify maternal death cases, as defined as a death within one year of pregnancy with a direct or indirect causation related to the pregnancy or postpartum period;

(2) review medical records and other relevant data;

(3) contact family members and other affected or involved persons to collect additional data;

(4) consult with relevant experts to evaluate the records and data;

(5) make determinations regarding the preventability of maternal deaths;

(6) develop recommendations for the prevention of maternal deaths; and

(7) disseminate findings and recommendations pursuant to subsection (F).

(C) (1) Health care providers and pharmacies licensed pursuant to Title 40 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to subsection (C) are not liable for civil damages or subject to criminal or disciplinary action for good faith efforts in providing the records.

(D) (1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this section are not admissible as evidence in any action of any kind in any court or before another tribunal, board, agency, or person. The information, records, reports, statements, notes, memoranda, or other data must not be exhibited nor their contents disclosed, in whole or in part, by an officer or a representative of the department or another person, except as necessary for the purpose of furthering the review of the committee of the case to which they relate. A person participating in a review may not disclose the information obtained except in strict conformity with the review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations authorized by the department pursuant to this provision are confidential.

(E) (1) All proceedings and activities of the committee, opinions of members of the committee formed as a result of the proceedings and activities, and records obtained, created, or maintained pursuant to this provision, including records of interviews, written reports, and statements procured by the department or another person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this provision, are confidential and are not subject to the provisions of Chapter 4, Title 30 relating to open meetings or public records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding. However, this provision must not be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

(2) Members of the committee must not be questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee. However, this provision must not be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(F) Reports of aggregated non-individually identifiable data for the previous calendar year must be compiled and disseminated by January thirty first of the following year in an effort to further study the causes and problems associated with maternal deaths. Reports must be distributed to the General Assembly, the Director of the Department of Health and Environmental Control, health care providers and facilities, key governmental agencies, and others necessary to reduce the maternal death rate.

(G) Members shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

lign:justify'> (G) Members shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

EXHIBIT B-2

34.47 found 1 time.

PLEASE NOTE

Text printed in *italic*, **boldface** indicates sections vetoed by the Governor.

* Indicates those vetoes sustained by the General Assembly.

** Indicates those vetoes overridden by the General Assembly.

Part 1B SECTION 34 - J040 - DEPARTMENT OF HEALTH AND
2016-2017 Appropriation Act

SECTION 34 - J040 - DEPARTMENT OF HEALTH AND

ENVIRONMENTAL CONTROL

34.1. (DHEC: County Health Departments Funding) Out of the appropriation provided in this section for Access to Care, the sum of $25,000 shall be distributed to the county health departments by the commissioner, with the approval of the Board of Department of Health and Environmental Control, for the following purposes:

(1) To insure the provision of a reasonably adequate public health program in each county.

(2) To provide funds to combat special health problems that may exist in certain counties.

(3) To establish and maintain demonstration projects in improved public health methods in one or more counties in the promotion of better public health service throughout the State.

(4) To encourage and promote local participation in financial support of the county health departments.

(5) To meet emergency situations which may arise in local areas.

(6) To fit funds available to amounts budgeted when small differences occur.

The provisions of this proviso shall not supersede or suspend the provisions of Section 13-7-30 of the 1976 Code.

34.2. (DHEC: County Health Units) General funds made available to the Department of Health and Environmental Control for the allocation to the counties of the State for operation of county health units be allotted on a basis approved by the Board of the Department of Health and Environmental Control. The amount of general funds appropriated herein for Access to Care shall be allocated on a basis such that no county budget shall receive less than the amount received in the prior fiscal year, except when instructed by the Executive Budget Office or the General Assembly to reduce funds within the department by a certain percentage, the department may unilaterally reduce the county health units up to the stipulated percentage.

34.3. (DHEC: Camp Burnt Gin) Private donations or contributions for the operation of Camp Burnt Gin shall be deposited in a restricted account. These funds may be carried forward and shall be made available as needed to fund the operation of the camp. Withdrawals from this restricted account must be in accordance with approved procedures.

34.4. (DHEC: Childrens Rehabilitative Services) The Childrens Rehabilitative Services shall be required to utilize any available financial resources including insurance benefits and/or governmental assistance programs, to which the child may otherwise be entitled in providing and/or arranging for medical care and related services to physically handicapped children eligible for such services, as a prerequisite to the child receiving such services.

34.5. (DHEC: Cancer/Hemophilia) Notwithstanding any other provisions of this act, the funds appropriated herein for prevention, detection and surveillance of cancer as well as providing for cancer treatment services, $545,449 and the hemophilia assistance program, $1,186,928 shall not be transferred to other programs within the agency and when instructed by the Executive Budget Office or the General Assembly to reduce funds within the department by a certain percentage, the department may not act unilaterally to reduce the funds for any cancer treatment program and hemophilia assistance program provided for herein greater than such stipulated percentage.

34.6. (DHEC: Local Health Departments) Counties of the state will be relieved of contribution requirements for salary, fringe benefits and travel reimbursement to local health departments. The amount of $5,430,697 is appropriated for county health department salaries, fringe benefits and travel. These funds and other state funds appropriated for county health units may, based upon need, be utilized in either salary or travel categories. Each county shall provide all other operating expenses of the local health department in an amount at least equal to that appropriated for operations for each county in Fiscal Year 1981. In the event any county makes uniform reductions in appropriations to all agencies or departments for maintenance and operations, exclusive of salaries and fringe benefits, a like reduction shall be made in funds appropriated for the operating expenses of the local health department.

34.7. (DHEC: Insurance Refunds) The Department of Health and Environmental Control is authorized to budget and expend monies resulting from insurance refunds for prior year operations for case services in family health.

34.8. (DHEC: Emergency Medical Services) Funds appropriated herein for Emergency Medical Services, shall be allocated for the purpose of improving and upgrading the EMS system throughout the state. The monies allocated to the Counties are for the purpose of improving or upgrading the local EMS system through the licensed ambulance services, the monies allocated to the EMS Regional Councils are for the administration of training programs and technical assistance to local EMS organizations and county systems. All additional funds are to be allocated as follows: to the counties at the ratio of eighty-one percent of the additional funds appropriated herein, to the EMS Regions at a ratio of twelve percent of the additional funds appropriated herein and to the state EMS Office at the ratio of seven percent of the additional funds appropriated herein. The Department of Health and Environmental Control shall develop criteria and guidelines and administer the system to make allocations to each region and county within the state, based on demonstrated need and local match. Funds appropriated to Emergency Medical Services shall not be transferred to other programs within the departments budget. Unexpended funds appropriated to the program may be carried forward to succeeding fiscal years and expended for administrative and operational support and for temporary and contract employees to assist with duties related to improving and upgrading the EMS system throughout the state, including training of EMS personnel and administration of grants to local EMS providers. In addition, when instructed by the Executive Budget Office or the General Assembly to reduce funds by a certain percentage, the department may not reduce the funds appropriated for EMS Regional Councils or Aid to Counties greater than such stipulated percentage.

34.9. (DHEC: Rape Violence Prevention Contract) Of the amounts appropriated in Rape Violence Prevention, $1,103,956 shall be used to support programmatic efforts of the states rape crisis centers with distribution of these funds based on the Standards and Outcomes for Rape Crisis Centers and each centers accomplishment of a preapproved annual action plan. For the current fiscal year, the department shall not reduce these contracts below the current funding level.

34.10. (DHEC: Sickle Cell Blood Sample Analysis) $16,000 is appropriated in Independent Living for the Sickle Cell Program for Blood Sample Analysis and shall be used by the department to analyze blood samples submitted by the four existing regional programs - Region I, Barksdale

Sickle Cell Anemia Foundation in Spartanburg; Region II, Clark Sickle Cell Anemia Foundation in Columbia; Region III, Committee on Better Racial Assurance Hemoglobinopathy Program in Charleston; and the Orangeburg Area Sickle Cell Anemia Foundation.

34.11. (DHEC: Sickle Cell Programs) $761,233 is appropriated for Sickle Cell program services and shall be apportioned as follows:

(1) sixty-seven percent is to be divided equitably between the existing Community Based Sickle Cell Programs located in Spartanburg, Columbia, Orangeburg, and Charleston; and

(2) thirty-three percent is for the Community Based Sickle Cell Program at DHEC.

The funds shall be used for providing prevention programs, educational programs, testing, counseling and newborn screening. The existing Community Based Sickle Cell Programs will provide counseling for families of newborns who test positive for sickle cell trait or other similar blood traits upon referral from DHEC. The balance of the total appropriation must be used for Sickle Cell Services operated by the Independent Living program of DHEC. The funds appropriated to the community based sickle cell centers shall be reduced to reflect any percent reduction assigned to the Department of Health and Environmental Control by the Executive Budget Office; provided, however, that the department may not act unilaterally to reduce the funds for the Sickle Cell program greater than such stipulated percentage. The department shall not be required to undertake any treatment, medical management or health care follow-up for any person with sickle cell disease identified through any neonatal testing program, beyond the level of services supported by funds now or subsequently appropriated for such services. No funds appropriated for ongoing or newly established sickle cell services may be diverted to other budget categories within the DHEC budget. For the current fiscal year, the department shall not reduce these funds below the current funding level.

34.12. (DHEC: Genetic Services) The sum of $104,086 appearing under the Independent Living program of this act shall be appropriated to and administered by the Department of Health and Environmental Control for the purpose of providing appropriate genetic services to medically needy and underserved persons. Such funds shall be used by the department to administer the program and to contract with appropriate providers of genetic services. Such services will include genetic screening, laboratory testing, counseling, and other services as may be deemed beneficial by the department, and these funds shall be divided equally among the three Regional Genetic Centers of South Carolina, composed of units from the Medical University of South Carolina, the University of South Carolina School of Medicine, and the Greenwood Genetic Center.

34.13. (DHEC: Revenue Carry Forward Authorization) The Department of Health and Environmental Control is hereby authorized to collect, expend, and carry forward revenues in the following programs: Sale of Goods (confiscated goods, arm patches, etc.), sale of meals at Camp Burnt Gin, sale of publications, brochures, Spoil Easement Areas revenue, performance bond forfeiture revenue for restoring damaged critical areas, beach renourishment appropriations, photo copies and certificate forms, including but not limited to, pet rabies vaccination certificate books, sale of listings and labels, sale of State Code and Supplements, sale of films and slides, sale of maps, sale of items to be recycled, including, but not limited to, used motor oil and batteries, sale and/or licensing of software products developed and owned by the Department, and collection of registration fees for non-DHEC employees. Any unexpended balance carried forward must be used for the same purpose.

34.14. (DHEC: Medicaid Nursing Home Bed Days) Pursuant to Section 44-7-84(A) of the 1976 Code, the maximum number of Medicaid patient days for which the Department of Health and Environmental Control is authorized to issue Medicaid nursing home permits is 4,452,015.

34.15. (DHEC: Health Licensing Fee) Funds resulting from an increase in the Health Licensing Fee Schedule shall be retained by the department to fund increased responsibilities of the health licensing programs. Failure to submit a license renewal application or fee to the department by the license expiration date shall result in a late fee of $75 or twenty-five percent of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed

and accurate renewal applications and/or fees by the time period specified by the department shall result in enforcement actions. The department may waive any or all of the assessed late fees in extenuating circumstances, as long as it is with public knowledge.

34.16. (DHEC: Infectious Waste Contingency Fund) The Department of Health and Environmental Control is authorized to use not more than $75,000 from the Infectious Waste Contingency Fund per year for personnel and operating expenses to implement the Infectious Waste Act.

34.17. (DHEC: Nursing Home Medicaid Bed Day Permit) When transfer of a Medicaid patient from a nursing home is necessary due to violations of state or federal law or Medicaid certification requirements, the Medicaid patient day permit shall be transferred with the patient to the receiving nursing home. The receiving facility shall apply to permanently retain the Medicaid patient day permit within sixty days of receipt of the patient.

34.18. (DHEC: Mineral Sets Revenue) The department is authorized to charge a reasonable fee for mineral sets. Funds generated from the sale of mineral sets may be retained by the department in a revolving account with a maximum carry forward of $2,000 and must be expended for mineral set supplies and related mining and reclamation educational products.

34.19. (DHEC: Spoil Easement Areas Revenue) The department is authorized to collect, retain and expend funds received from the sale of and/or third party use of spoil easement areas, for the purpose of meeting the State of South Carolinas responsibility for providing adequate spoil easement areas for the Atlantic Intracoastal Waterway in South Carolina.

34.20. (DHEC: Per Visit Rate) The SC DHEC is authorized to compensate nonpermanent, part-time employees on a fixed rate per visit basis. Compensation on a fixed rate per visit may be paid to employees for whom the department receives per visit reimbursement from other sources. These individuals will provide direct patient care in a home environment. The per visit rate may vary based on the discipline providing the care and the geographical location of services rendered. Management may pay exempt or nonexempt employees as defined by the Fair Labor Standards Act only when they are needed to work. Individuals employed in this category may exceed twelve months, but are not eligible for State benefits except for the option of contributing to the State Retirement System.

34.21. (DHEC: Allocation of Indirect Cost and Recoveries) The department shall continue to deposit in the general fund all indirect cost recoveries derived from state general funds participating in the calculation of the approved indirect cost rate. Further administration cost funded with other funds used in the indirect cost calculation may, based on their percentage, be retained by the agency to support the remaining administrative costs of the agency.

34.22. (DHEC: Permitted Site Fund) The South Carolina Department of Health and Environmental Control may expend funds as necessary from the permitted site fund established pursuant to Section 44-56-160(B)(1), for legal services related to environmental response, regulatory, and enforcement matters, including administrative proceedings and actions in state and all federal courts.

34.23. (DHEC: Shift Increased Funds) The director is authorized to shift increased appropriated funds in this act to offset shortfalls in other critical program areas.

34.24. (DHEC: Health Licensing Monetary Penalties) In the course of regulating health care facilities/services, the Bureau of Health Facilities Licensing (BHFL) assesses civil monetary penalties against nonconforming providers. BHFL shall retain up to the first $50,000 of civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that division. These funds shall be separately accounted for in the departments fiscal records.

34.25. (DHEC: Health Facilities Licensing Monetary Penalties) In the course of regulating health care facilities and services, the Bureau of Health Facilities Licensing (BHFL) assesses civil monetary penalties against nonconforming providers. BHFL shall retain up to the first $100,000 of

civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that division. These funds shall be separately accounted for in the departments fiscal records. Regulations for nursing home staffing for the current fiscal year must (1) provide a minimum of one and sixty-three hundredths (1.63) hours of direct care per resident per day from the non-licensed nursing staff; and (2) maintain at least one licensed nurse per shift for each staff work area. All other staffing standards and non-staffing standards established in Standards for Licensing Nursing Homes: R61-17, Code of State Regulations, must be enforced.

34.26. (DHEC: Radiological Health Monetary Penalties) In the course of regulating health care facilities/services, the Bureau of Radiological Health (BRH) assesses civil monetary penalties against nonconforming providers. BRH shall retain up to the first $30,000 of civil monetary penalties collected each fiscal year and these funds shall be utilized solely to carry out and enforce the provisions of regulations applicable to that Bureau. These funds shall be separately accounted for in the departments fiscal records.

34.27. (DHEC: Prohibit Use of Funds) The Department of Health and Environmental Control must not use any state appropriated funds to terminate a pregnancy or induce a miscarriage by chemical means.

34.28. (DHEC: Meals in Emergency Operations) The cost of meals may be provided to state employees who are required to work during actual emergencies and emergency simulation exercises when they are not permitted to leave their stations.

34.29. (DHEC: Compensatory Payment) In the event the President of the United States has declared a state of emergency or the Governor has declared a state of emergency in a county in the State, Fair Labor Standards Act exempt employees of the department may be paid for actual hours worked in lieu of accruing compensatory time, at the discretion of the agency Director, and providing funds are available.

34.30. (DHEC: Beach Renourishment and Monitoring and Coastal Access Improvement) If state funds are made available or carried forward from any general revenue, capital, surplus or bond funding appropriated to the department for beach renourishment and maintenance, the department shall be able to expend not more than $100,000 of these funds annually to support annual beach profile monitoring. Additional funds made available or carried forward for beach renourishment projects that are certified by the department as excess may be spent for beach renourishment and departmental activities that advance the policy goals contained in the State Beachfront Management Plan, R.30-21.

34.31. (DHEC: South Carolina State Trauma Care Fund) Of the funds appropriated to the South Carolina State Trauma Care Fund, $2,268,885 shall be utilized for increasing the reimbursement rates for trauma hospitals, for trauma specialists professional fee, for increasing the capability of EMS trauma care providers from counties with a high rate of traumatic injury deaths to care for injury patients, and for support of the trauma system, based on a methodology as determined by the department with guidance and input from the Trauma Council as established in Section 44-61-530 of the South Carolina Code of Laws. The methodology to be developed will include a breakdown of disbursement of funds by percentage, with a proposed seventy-six and one half percent disbursed to hospitals and trauma physician fees, sixteen percent of the twenty-one percent must be disbursed to EMS providers for training EMTs, Advanced EMTs and paramedics by the four regional councils of this state and the remaining five percent must be disbursed to EMS providers in counties with high trauma mortality rates, and two and one half percent allocated to the department for administration of the fund and support of the trauma system. The Department of Health and Environmental Control shall promulgate regulations as required in Section 44-61-540 of the 1976 Code for the administration and oversight of the Trauma Care Fund.

34.32. (DHEC: Pandemic Influenza) The Department of Health and Environmental Control shall assess South Carolinas ability to cope with a major influenza outbreak or pandemic influenza and maintain an emergency plan and stockpile of medicines and supplies to improve the states readiness condition. The department shall report on preparedness measures to the Speaker of the

House of Representatives, the President Pro Tempore of the Senate, and the Governor by November first, each year. The department, in conjunction with the Department of Health and Human Services, is authorized to establish a fund for the purpose of developing an emergency supply, stockpile, and distribution system of appropriate antiviral, antibiotic, and vaccine medicines and medical supplies. In the event the United States Department of Health and Human Services makes available medicines or vaccines for purchase by states via federal contract or federally subsidized contract or other mechanism, the department, with Executive Budget Office approval, may access appropriated or earmarked funds as necessary to purchase an emergency supply of these medicines for the State of South Carolina.

34.33. (DHEC: Pharmacist Services) For the current fiscal year, provisions requiring that all department facilities distributing or dispensing prescription drugs be permitted by the Board of Pharmacy and that each pharmacy have a pharmacist-in-charge are suspended. Each Department of Health and Environmental Control Public Health Region shall be required to have a permit to distribute or dispense prescription drugs. A department pharmacist may serve as the pharmacist-in-charge without being physically present in the pharmacy. The department is authorized to designate one pharmacist-in-charge to serve more than one department facility. Only pharmacists, nurses, or physicians are allowed to dispense and provide prescription drugs/products/vaccines for conditions or diseases that the department treats, monitors, or investigates. In the event of a public health emergency or upon activation of the strategic national stockpile, other medications may be dispensed as necessary.

34.34. (DHEC: Coastal Zone Appellate Panel) The Coastal Zone Appellate Panel as delineated in Section 48-39-40 of the 1976 Code under the Department of Health and Environmental Control shall be suspended for the current fiscal year.

34.35. (DHEC: Rural Hospital Grants) Rural Hospital Grants funds shall be allocated to public hospitals in very rural or rural areas whose largest town is less than 25,000 and whose licensed bed capacity does not exceed two hundred beds. Hospitals qualifying for the grants shall utilize such funds for any of the following purposes: (a) the development of preventive health programs, medical homes, and primary care diversion from emergency departments; (b) expanded health services, including physician recruitment and retention;(c) to improve hospital facilities; (d) activities involving electronic medical records or claims processing systems; (e) to enhance disease prevention activities in diabetes, heart disease, etc; and (f) activities to ensure compliance with State or Federal regulations.

34.36. (DHEC: Camp Burnt Gin) Notwithstanding any other provision of law, the funds appropriated to the department pursuant to Part IA, or funds from any other source, for Camp Burnt Gin must not be reduced in the event the department is required to take a budget reduction.

34.37. (DHEC: Metabolic Screening) The department may suspend any activity related to blood sample storage as outlined in Section 44-37-30 (D) and (E) of the 1976 Code, if there are insufficient state funds to support the storage requirements. In that event, the samples may be destroyed in a scientifically appropriate manner after testing. The department shall notify providers of the suspension within thirty days of its effective date.

34.38. (DHEC: Fetal Pain Awareness) (A) The department must utilize at least one hundred dollars to prepare printed materials concerning information that unborn children at twenty weeks gestation and beyond are fully capable of feeling pain and the right of a woman seeking an abortion to ask for and receive anesthesia to alleviate or eliminate pain to the fetus during an abortion procedure. The materials must be provided to each abortion provider in the State and must be placed in a conspicuous place in each examination room at the doctors office. The materials must contain only the following information:

Fetal Pain Awareness

An unborn child who is twenty weeks old or more is fully capable of experiencing pain. Anesthesia provided to a woman for an abortion typically offers little pain prevention for the unborn child. If you

choose to end your pregnancy, you have a right to have anesthesia or analgesic administered to alleviate the pain to your unborn child during the abortion.

(B) The materials must be easily comprehendible and must be printed in a typeface large and bold enough to be clearly legible.

34.39. (DHEC: SCHIDS) From funds appropriated for Chronic Disease Prevention, the department shall establish a South Carolina Health Integrated Data Services (SCHIDS) program to disseminate data about prevalence, treatment and cost of disease from the South Carolina Health and Human Services Data Warehouse and in particular the Medicaid System. The purpose of the program is to educate communities statewide about improving health and wellness through lifestyle changes.

The Revenue and Fiscal Affairs Office shall provide data needed by the SCHIDS program to fulfill its mission, and all state agencies and public universities involved in educating South Carolinians through public programs for the purpose of improving health and wellness shall communicate with the program in order to improve collaboration and coordination and the possible use of SCHIDS to assist in the evaluation of program outcomes.

Medicaid staff shall coordinate with the SCHIDS program staff to target Prevention Partnership Grant awards to those communities demonstrating a prevalence of chronic disease and/or lack of access to care.

34.40. (DHEC: Abstinence Education Contract) For the current fiscal year, funds made available to the State of South Carolina under the provisions of Title V, Section 510, may only be awarded to other entities through a competitive bidding process.

34.41. (DHEC: Immunizations) The department is authorized to utilize the funds appropriated for immunizations to hire temporary personnel to address periods of high demand for immunizations at local health departments.

34.42. (DHEC: Obesity) The Department of Health and Environmental Control is charged with addressing the public health of our citizens and shall be the convener and coordinator of the fight against Obesity in South Carolina. Because addressing the obesity epidemic requires behavioral, educational, systemic, medical, and community involvement, the following state agencies should use their best efforts to cooperate with the requests of the department and its partners to facilitate an environment that decreases body mass index (BMI): Department of Education; Department of Health and Human Services; Department of Social Services; Department of Mental Health; Medical University of South Carolina; University of South Carolina Arnold School of Public Health; Department of Parks, Recreation and Tourism; Department of Commerce; Department of Transportation; and Commission for the Blind.

In addition, school districts must provide the Department of Health and Environmental Control with information regarding their progress towards meeting certain provisions of the Student Health and Fitness Act of 2005, specifically: Section 59-10-10 regarding the average number of minutes students exercise weekly; Section 59-10-50 regarding the SC Physical Education Assessment; Section 59-10-310 regarding efforts to promote healthy eating patterns; Section 59-10-320 regarding assessment of school district health education programs; Section 59-10-340 regarding snacks in vending machines; and Section 59-10-360 regarding health curriculum. The department is given the authority to collect, compile and assess the progress of the State and the School Districts in meeting the goals of this act.

34.43. (DHEC: Residential Treatment Facilities Swing Beds) For Fiscal Year 2016-17 in coordination with the South Carolina Health Plan and to improve access for acute psychiatric beds as patient populations demand, Residential Treatment Facilities (RTF) may swing up to eighteen beds per qualifying facility to accommodate patients with a diagnosis of an acute psychiatric disorder. In order to qualify to utilize swing beds a facility must meet the following criteria: the facility must currently have both licensed acute psychiatric and residential treatment facility beds, the RTF beds must meet the same licensure requirements as the existing licensed acute

psychiatric beds, and any facility utilizing swing beds must keep the acute and RTF patient populations separate and distinct. The utilization of swing beds must also comply with all federal Centers for Medicare and Medicaid Services rules and regulations.

34.44. (DHEC: Tuberculosis Outbreak) (A) Upon discovery of a tuberculosis outbreak, the Department of Health and Environmental Control may expend any funds available to the agency, for the purpose of surveillance, investigation, containment, and treatment activities related thereto.

(B) During an investigation of an index tuberculosis patient, the Department of Health and Environmental Control, through the South Carolina Health Alert Network, must notify the patients community that a tuberculosis contact investigation is being conducted into the possible exposure to tuberculosis. This subsection only applies if the investigation of the patient has met all of the following criteria:

(1) abnormal chest x-rays;

(2) positive Acid Fast Bacilli (AFB) sputum results; and

(3) first round of contact investigation completed with results of individuals testing positive outside of the index patients family.

(C) Upon being informed of or having reason to suspect a case of tuberculosis that is capable of transmitting tubercle bacilli at a school or child care center involving a student, teacher, employee, volunteer, or an individual working at the school or child care center for an employer providing services to the school or child care center, the department immediately shall notify:

(1) if the case is at a school, the principal, and the Superintendent of the school district if the school is a public school; and

(2) if the case is at a child care center, the director of the child care center; and

(D) When informing the principal of a school or the director of a child care center about a known or suspected case of tuberculosis that is capable of transmitting tubercle bacilli as provided for in subsection (C), the department shall provide:

(1) an update addressing the:

(a) status of the investigation, including the steps the department is taking to identify the source and extent of the exposure and the risks of additional exposure; and

(b) steps the school or child care center must take to assist the department in controlling the spread of the tuberculosis infection; and

(2) information and other resources to distribute to parents and guardians that discuss how to assist the department in identifying and managing the tuberculosis infection.

34.45. (DHEC: Abstinence-Until-Marriage Emerging Programs) (A) From the funds appropriated to DHEC in this act as a Special Item and titled Abstinence-Until Marriage Emerging Programs the department shall award a twelve month grant for abstinence-until-marriage emerging programs. This funding shall be awarded by the department only to nonprofit 501(c)(3) agencies meeting all the A-H Title V, Section 510 definitions of Abstinence Education.

(B) Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code.

(C) Applicants must provide a budget and budget narrative to the department that explains how the funds will be used.

(D) Prior to application, proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirements for abstinence-until-marriage education programs.

(E) The department shall determine and develop the necessary application for awards.

(F) The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

Organizations or individuals awarded grants must provide quarterly reports on expenditures and participation to the Department of Health and Environmental Control and the Department of Social Services within fifteen days of the end of each quarter.

(G) Grantees failing to submit reports within thirty days of the end of each quarter will be terminated.

34.46. (DHEC: Abstinence Until Marriage Evidence-Based Programs Funding) From the monies appropriated for the Continuation of Teen Pregnancy Prevention, contracts must be awarded to separate private, nonprofit 501(c)(3) entities to provide Abstinence Until Marriage teen pregnancy prevention programs and services within the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the departments contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.47. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A qualified wave dissipation device is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.48. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers, accredited by the Commission on Accreditation of Birth Centers, must register an on-call agreement and any transfer policies with the Department of Health and Environmental Control. The on-call agreement shall contain provisions which provide that the on-call physician is readily available to provide medical assistance either in person or by telecommunications or other electronic means, which means the physician must be within a thirty minute drive of the birthing center or hospital, must be licensed in the State of South Carolina, and shall provide consultation and advice to the birthing center at all times it is serving the public. Furthermore, a birthing center shall document in its practice guidelines and policies the ability to transfer care to an acute care hospital with obstetrical and newborn services and must demonstrate this by: (A) coordinated transfer care plans, protocols, procedures, arrangements, or through collaboration with one or more acute care hospitals with appropriate obstetrical and newborn services; and (B) admitting privileges at one or more hospitals with appropriate obstetrical and newborn services by a birthing centers consulting physician. The department shall require a $25.00 registration fee upon receipt and review of the agreements containing these provisions. Birthing centers registering on-call and transfer policies in accordance with this proviso shall be deemed by the department to be in compliance with Section 44-89-60(3) of the South Carolina Code and any implementing regulations for this fiscal year.

34.49. (DHEC: Abortion Clinic Certification) Prior to January 31, 2017, a facility other than a hospital that is licensed and certified by the department to perform abortions must file a report with the department that provides the number of physicians that performed an abortion at the facility between July 1, 2016 and December 31, 2016, who did not have admitting privileges at a local certified hospital and staff privileges to replace on-staff physicians at the certified hospital and the percentage of these physician in relation to the overall number of physicians who performed abortions at the facility. The report must include a summation of any abortion that resulted in an outcome which required a level of aftercare that exceeds what is customarily provided by physicians in such cases in accordance with accepted medical practice and indicate whether or not the abortion was performed by a physician with admitting privileges at a local certified hospital and staff privileges to replace on-staff physicians at the certified hospital. Any summation of any abortion must not divulge any information that is privileged or required to be maintained as confidential by any provision of law. An applicable facility must remit a twenty-five dollar filing fee to the department for the report required by this provision.

34.50. DELETED

34.51. DELETED

34.52. (DHEC: Data Center Migration) Of the funds appropriated to the Department of Health and Environmental Control for Data Center Migration, the department must utilize the Department of Administration, Division of Technology Operations for shared services, including but not limited to, mainframe services, application hosting, servers, managed servers, storage, network services and disaster recovery services.

34.53. (DHEC: AIDS Service Provision Program) For the current fiscal year, funds appropriated and authorized to the Department of Health and Environmental Control for clinical services and medical case management shall be used to direct the department to establish through contract a pilot program for the expansion of direct services to clients who are HIV positive. As part of the pilot program, the department shall facilitate 340b pricing for the AIDS Healthcare Foundation by utilizing Ryan White Part B federal funding to support this pilot in order to maximize the states resources and service provision beyond its current levels. The department shall require that the AIDS Healthcare Foundation provide any reports or information required by the 340b pricing program, and shall provide proof of the contractual relationship between the department and the AIDS Healthcare Foundation to the Office of Pharmacy Affairs at HRSA.

34.54. (DHEC: Home Health License Transfer) From the funds made available through the transfer of licenses for Home Health Services from the Department of Health and Environmental Control to Capital Care Resources of South Carolina, LLC, the department shall use the first $750,000 for the final close out of Home Health including coverage of contractual obligations for the Home Health information system and to transition those records to another format to meet record retention requirements and cover the one-time, non-recurring expenses for the following items:

(1) Data Center Infrastructure $ 2,618,400;

(2) Pinewood Custodial Site Capital Improvements and Repairs $ 5,200,000;

(3) Electronic Medical Records $ 5,781,600; and

(4) Flood Recovery Operations $ 3,150,000.

34.55. (DHEC: Coastal Zone Boundary) Of the funds appropriated, the Department of Health and Environmental Control shall report to the General Assembly by January 1, 2017, with an initial recommendation to revise the coastal zone boundary, if any, and the study shall begin with Dorchester County.

34.56. (DHEC: Indoor Aquatic and Community Center Match Requirement) The 2:1 match requirement associated with the appropriation of $100,000 non-recurring funds through the Department of Health and Environmental Control for the Indoor Aquatic and Community Center - Richland County (Requires 2:1 Match) in Act 91 of 2015 by proviso 118.14(B)(22)(j) shall be amended to require a 1:1 match.

34.57. DELETED

SLOTCHIVER & SLOTCHIVER, L.L.P.
ATTORNEYS AT LAW
EST. 1959

IRVIN J. SLOTCHIVER
DANIEL S. SLOTCHIVER
STEPHEN M. SLOTCHIVER

ANDREW J. McCUMBER

44 STATE STREET
CHARLESTON, SC 29401-2810

TELEPHONE (843) 577-6531
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July 20, 2016

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

VIA COURIER

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference [Carole L. Slotchiver]

Dear Madam Clerk:

This office represents Carole L. Slotchiver ("Requestor,") who owns beachfront property on Isle of Palms, in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 12 Beachwood East, Isle of Palms, SC 29451, and by property identification number 604-10-00-042.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request. The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights,

duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[1] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;

[1] Amended in 2015-2016 as Budget Proviso 43.38.

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[2]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions ... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[3]

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's

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[2] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[3] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[4]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[5] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species listed as endangered."[6] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[7]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[8] In fact, the Mid-Season Summary of turtle activity

---

[4] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.
[5] Emphasis added.
[6] SCELP letter, p. 3, emphasis added.
[7] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.

data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[9] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[10] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[11]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East on Isle of Palms is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[12] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle

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[8] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[9] See, Ex. E.
[10] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[11] See Ex. E (mid-season summary email).
[12] See Ex. D (monthly beach report table).

species.[13] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[14]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential for harm, but with no examples or evidence to indicate that the potential actually exists.[15]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[16] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before

[13] See letter attached as Ex. F (June 22 2016 letter).
[14] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).
[15] See Ex. G, p. 2.
[16] See email attached as Ex. H. (from Rheta to Matt)

ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestors respectfully request that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestors ask that the Department's prior decision to allow the WDS to remain in place pending this Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Daniel S. Slotchiver

DSS/jas
Enclosures

D H E C

PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

EXHIBIT A

July 8, 2016

Mr. Irvin Slotchiver
44 State Street
Charleston, SC 29401

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Slotchiver,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2

The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Beachwood East on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attachr

EXHIBIT
C

The South Carolina Environmental Law Proj

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

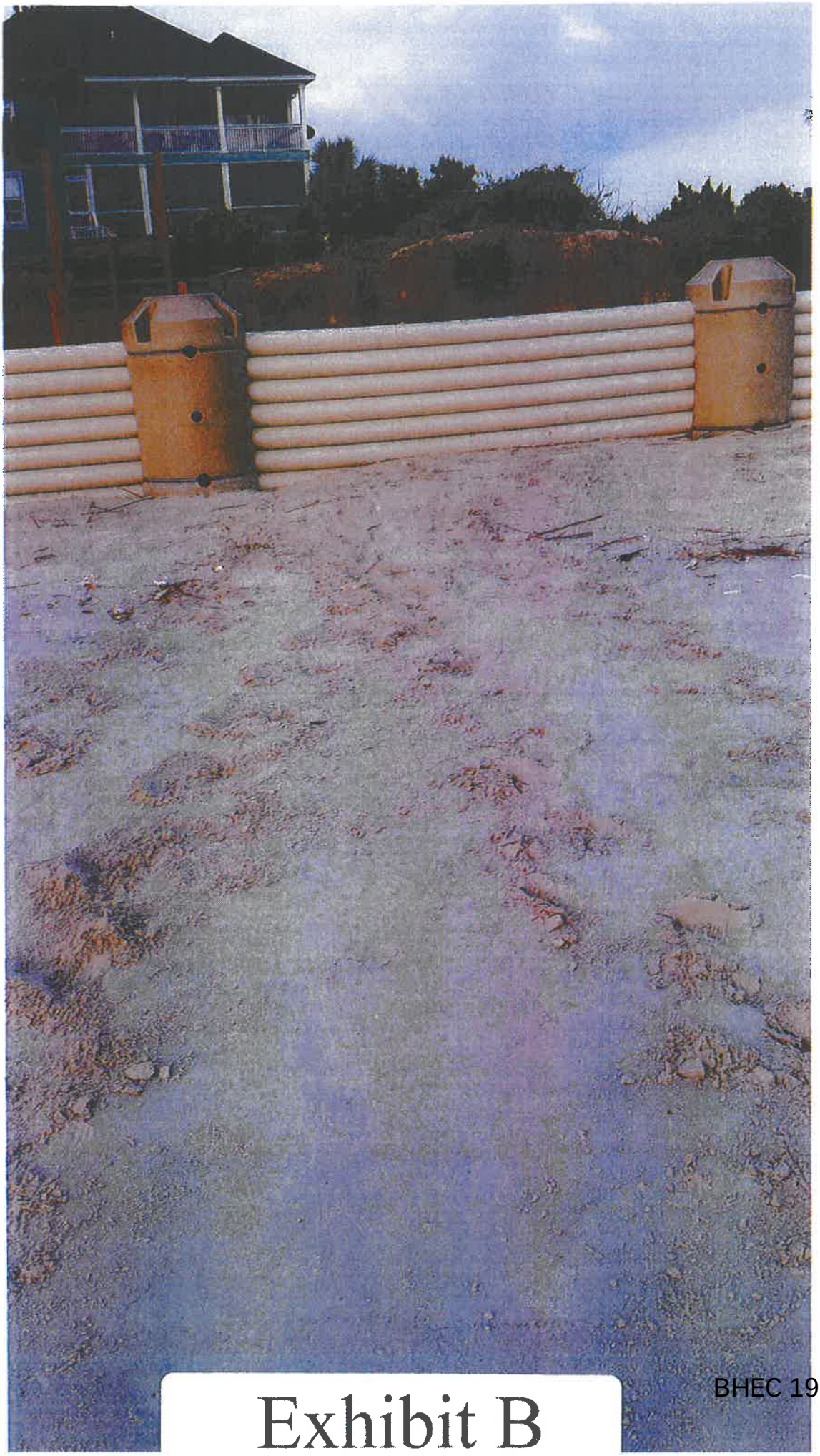
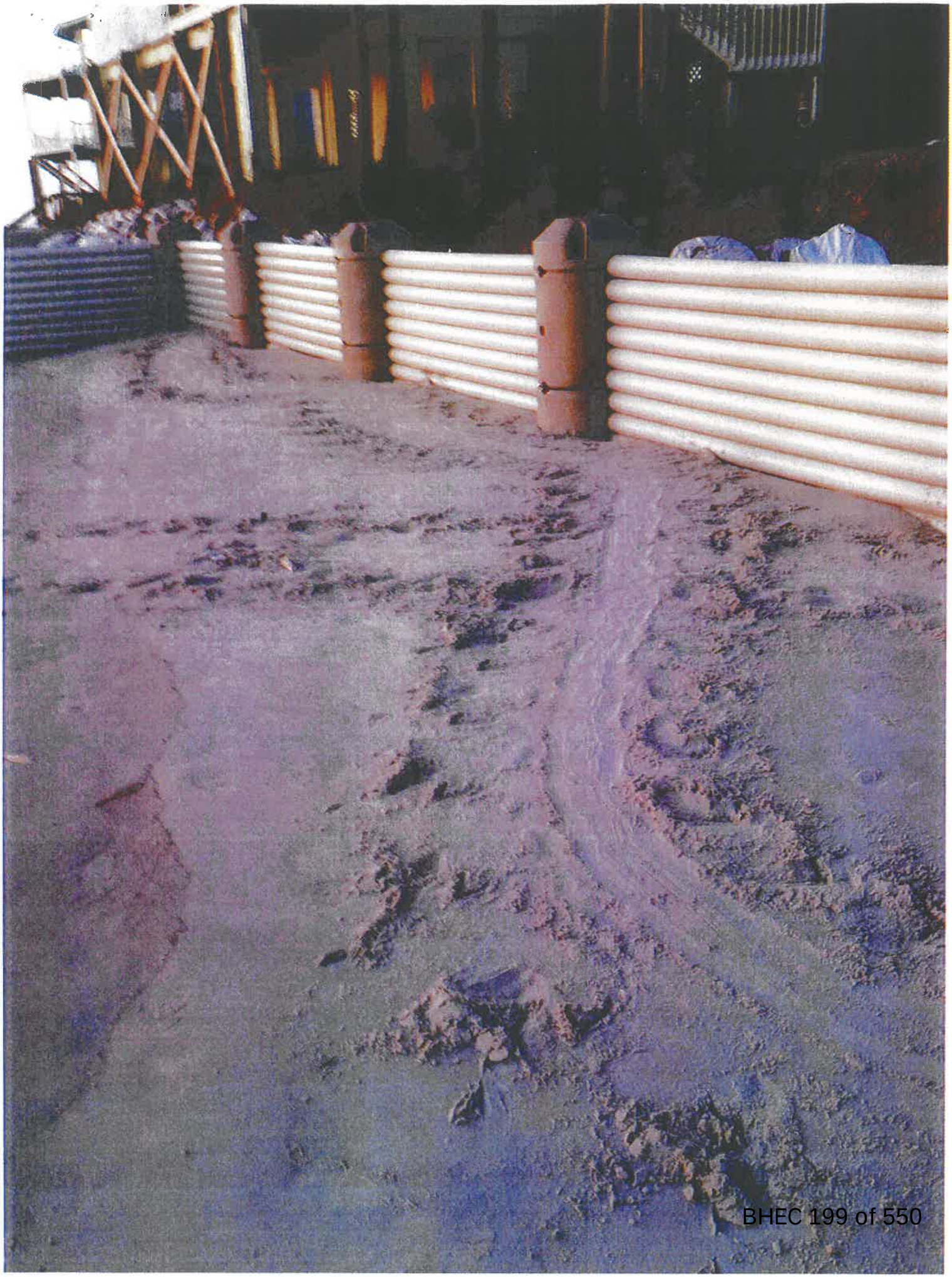


Exhibit B



BHEC 200 of 550

EXHIBIT D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	100	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	71.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.8
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	80.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	133	196	333	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2983	3649	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT

G

South Carolina Department of Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Kathryn V. Balazs

Dear Madam Clerk:

This office represents Kathryn V. Balazs "Requestor," who owns beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 14 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000044.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions ... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

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[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.
[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

DHEC 218 of 550

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&v

2015-2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

EXHIBIT C

Attach

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

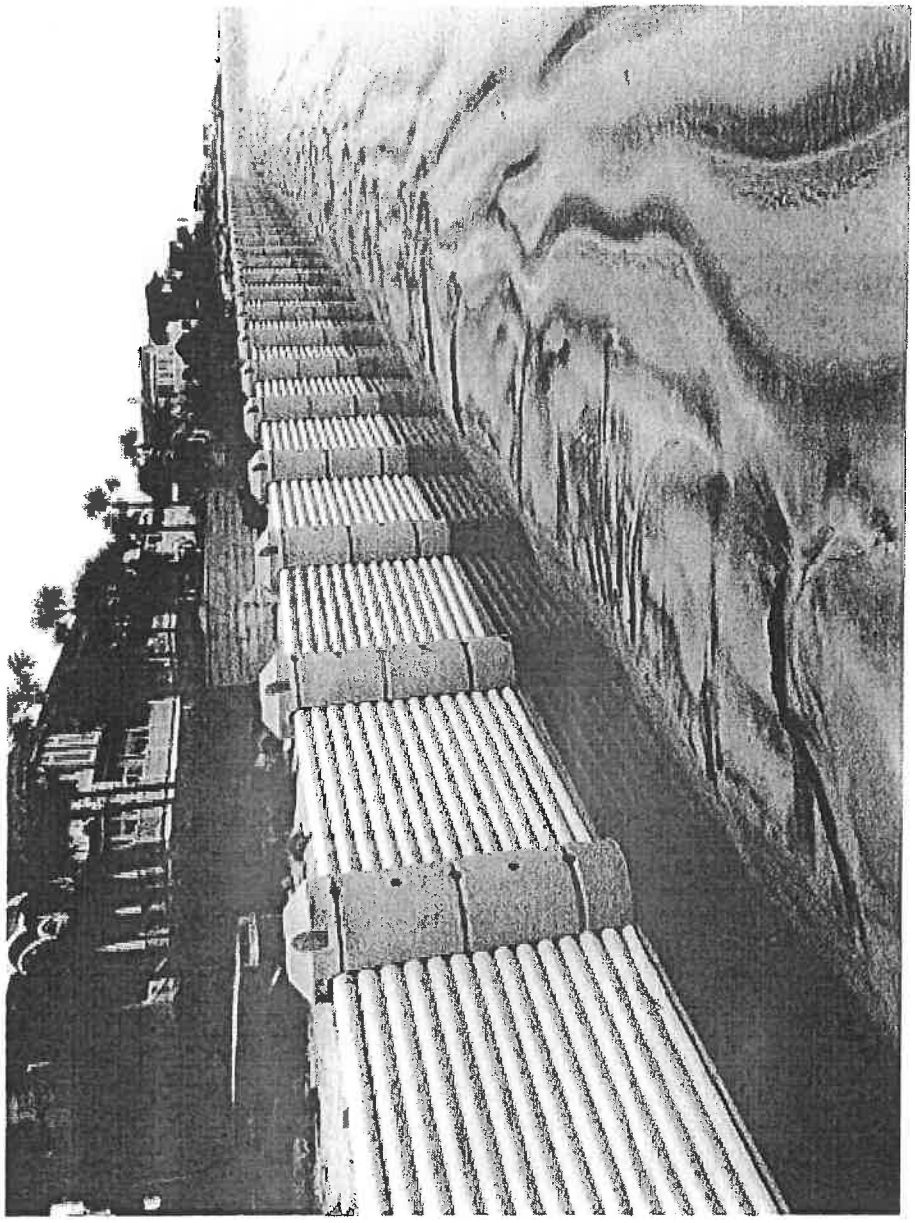

Exhibit A

Exhibit B

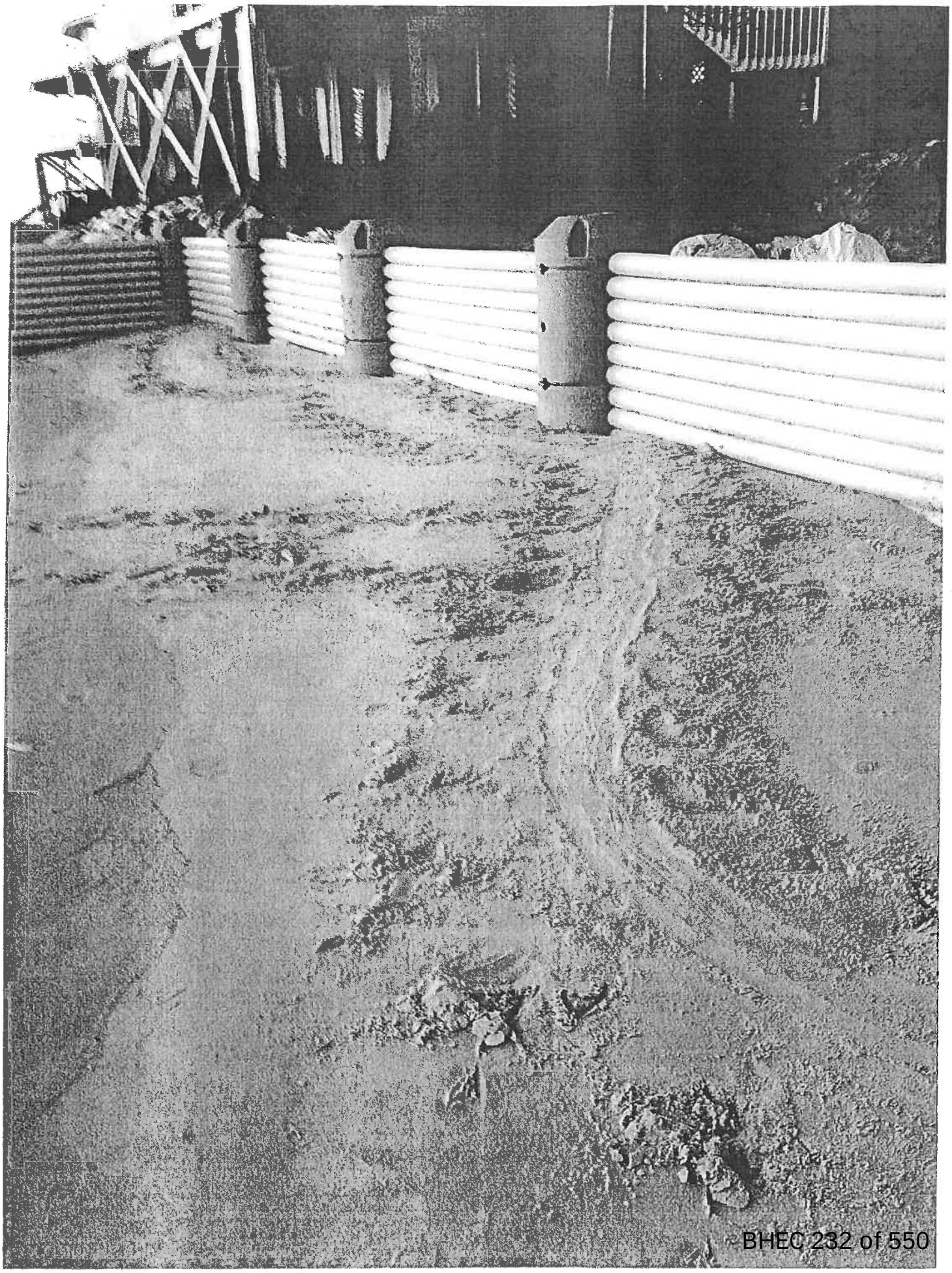

EXHIBIT D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	20	24	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	60.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	6	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	35.7
Little Capers Island	0	0	17	4	26	25	12	19	55	50	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	16.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.9
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	864	930	2982	3645	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

EXHIBIT

E

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C

PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT
G

South Carolina Department of Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT

H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:48:48 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data Refreshed as of	Assess Year	Pay Year
6041000044		14 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	BALAZS KATHRYN V	Property Class Code	101 - RESID-SFR
Owner Address	1029 THICKET WALK DAYTON OH 45429	Acreage	.0000
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 25 TRACT A BLK W PlatSuffix AN-29 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,500,000	$100,000	$1,600,000	$18,682.20	$18,682.20
2014	$1,500,000	$100,000	$1,600,000	$18,087.00	$18,087.00
2013	$1,900,000	$200,000	$2,100,000	$23,760.00	$23,760.00
2012	$1,900,000	$200,000	$2,100,000	$23,806.20	$23,806.20

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
STEVENSON HAL W	0375 656	11/25/2013	G		$1,600,000
STEVENSON HAL W	0375 655	11/5/2013	G		$0
WEMMER OTTO	E548 145	3/25/2005	G		$546,000
STEVENSON HAL W	E325 458	4/22/1999	G		$5
BYRD LLOYD G	F319 561	1/26/1999	G		$800,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1982	1.5	04	3,162	

RECEIVED
JUL 21 2016
Clerk, Board of Health
& Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Paul J. Conway

Dear Madam Clerk:

This office represents Paul J. Conway "Requestor," who owns beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 11 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000041.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions ... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

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[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "… of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

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[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

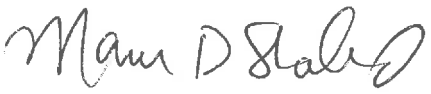
According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,



Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will 2 continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may 3 request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&v

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attachm

EXHIBIT
C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Amelia A. Thompson
Staff Attorney
Jessie A. White
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

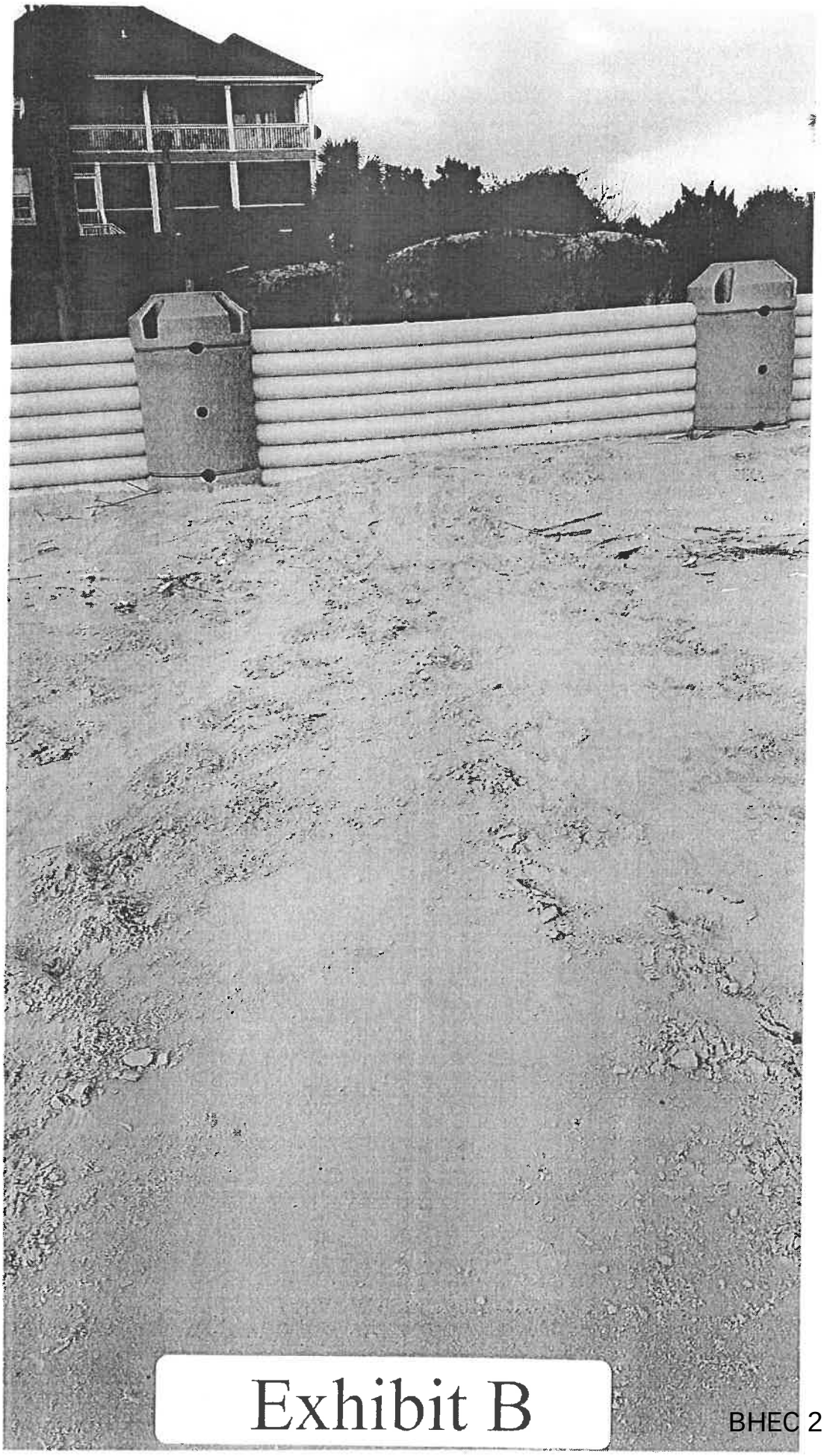
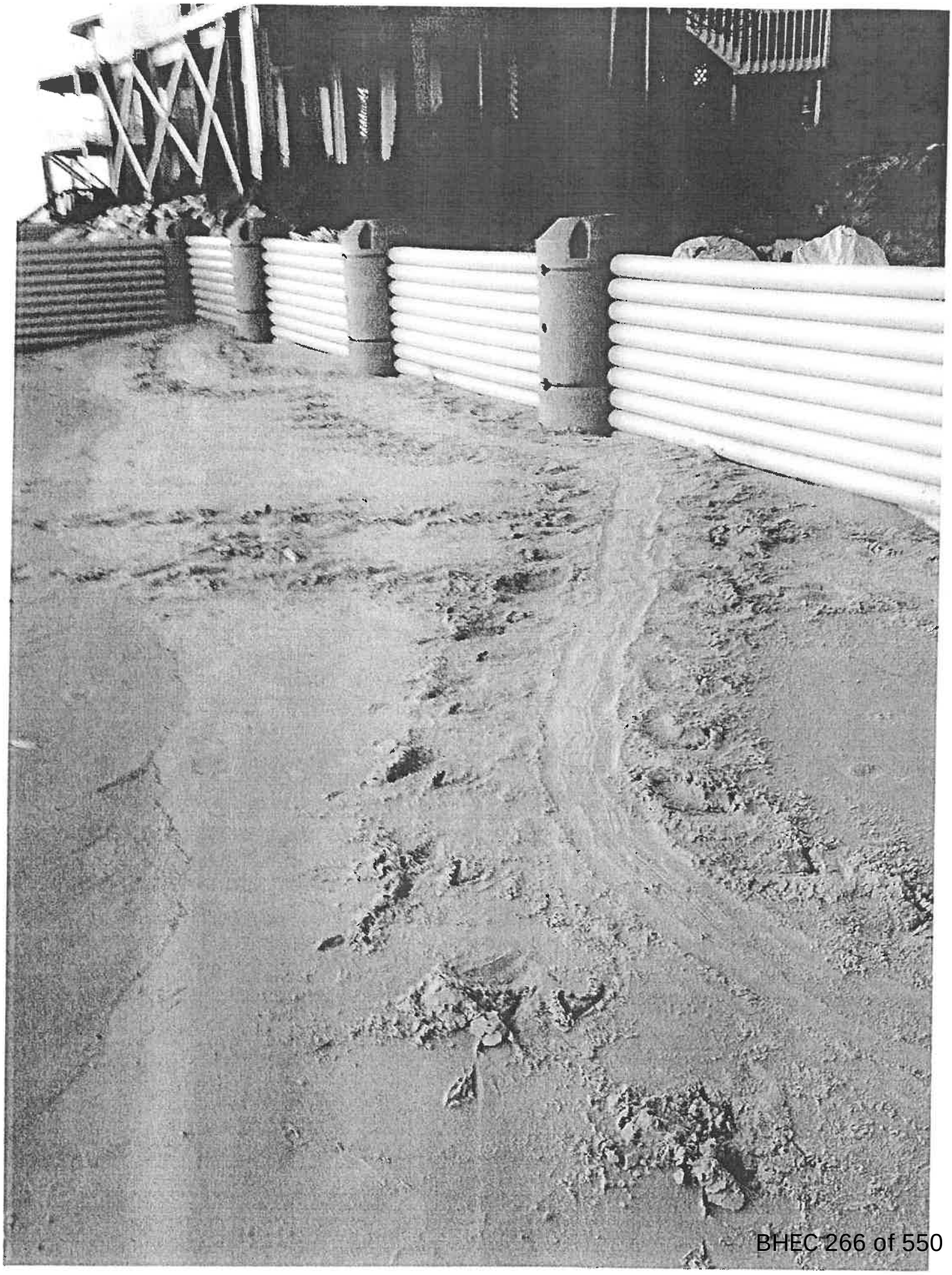


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT
D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.1	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	20	34	111	10	62	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	15	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	10	59	81	30	46	103	145	n/a	n/a	60.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.3
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	100	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	21	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	8	0	884	920	2962	3643	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT

G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
14

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:38:46 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data Refreshed as of	Assess Year	Pay Year
6041000041		11 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	CONWAY PAUL J GARY SCHWAB	Property Class Code	101 - RESID-SFR
Owner Address	50 BEACON ST UNIT 1 BOSTON MA 02108	Acreage	.0000
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 22 TRACT A BLK W PlatSuffix AN-29 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,500,000	$350,000	$1,850,000	$21,580.20	$21,580.20
2014	$1,899,999	$225,000	$2,124,999	$23,977.50	$23,977.50
2013	$1,899,999	$225,000	$2,124,999	$24,041.25	$24,041.25
2012	$1,899,999	$225,000	$2,124,999	$24,088.00	$24,088.00

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
GWINN ROBERT LAYTON	0098 401	12/18/2009	G		$2,125,000
GWINN JOHN C JR	0013 809	7/31/2008	G		$5
GWINN JOHN C	U420 144	10/1/2002	G		$1,212,169
STATE OF SOUTH CAROLINA THE	N236 202	12/20/1993	G		$360,000
LUCAS DAVID H	C229 679	7/7/1993	G		$425,000
HECKER GUY L JR	Y159 297	12/3/1986	G		$475,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1996	2.0	05	4,206	

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Patricia R. Gardner

Dear Madam Clerk:

This office represents Patricia R. Gardner "Requestor," who owns beachfront property on Harbor Island in Beaufort County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 122 Harbor Drive N, Saint Helena Island, South Carolina 29920, and by property identification number R300 020 00C 0028 0000.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Harbor Island is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions ... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

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[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

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[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Harbor Island is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta S. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attachi

EXHIBIT
C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

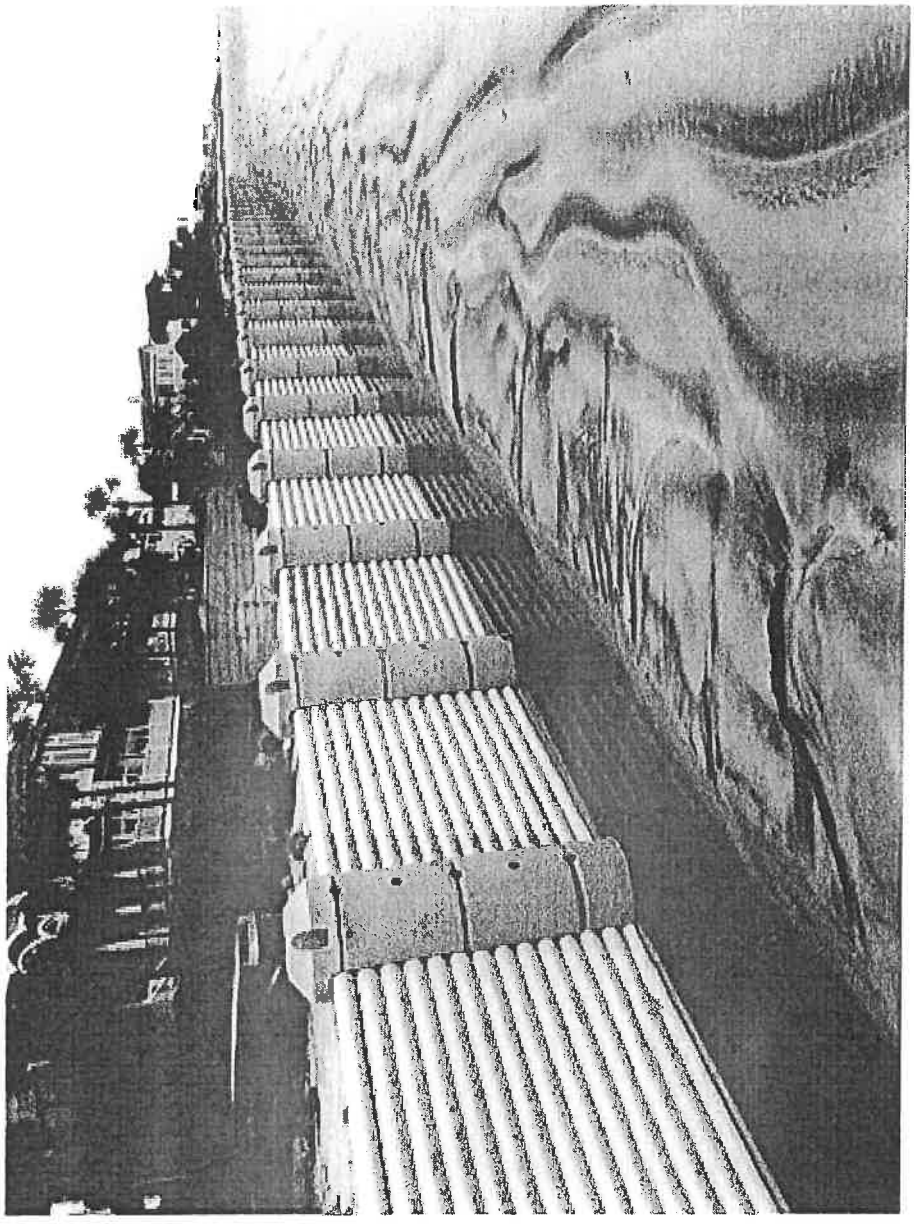

Exhibit A

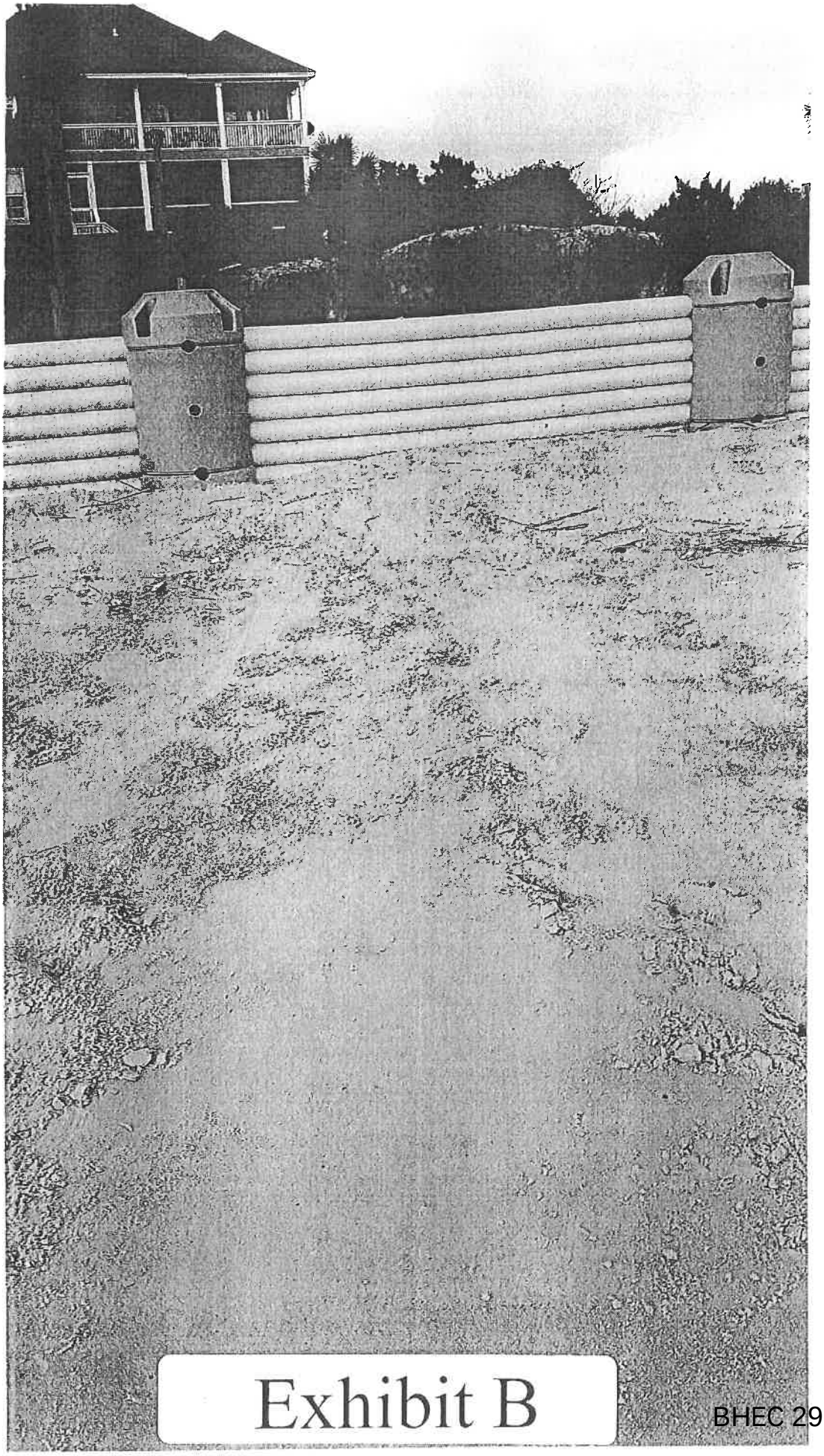

Exhibit B

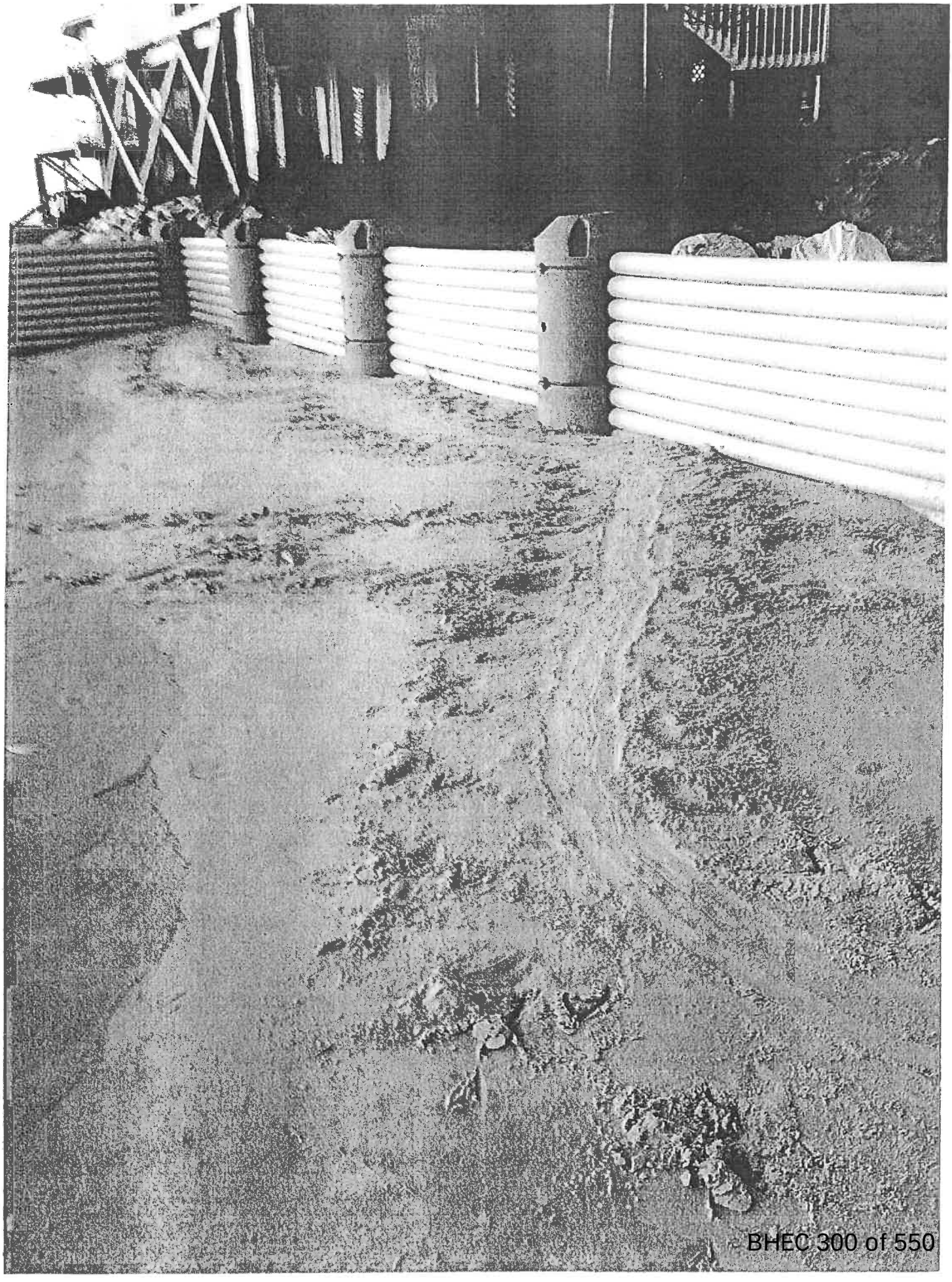

EXHIBIT D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.6	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	725	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	8.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	60.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	36	97	101	56	68	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.2
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3649	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT
G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Overview

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R300 020 00C 0028 0000	02040026	122 HARBOR DR,	7/16/2016

Current Parcel Information

Owner	GARDNER PATRICIA R	Property Class Code	ResImp SingleFamily
Owner Address	202 DATAW DRIVE DATAW ISLAND SC 29920	Acreage	.2900
Legal Description	LOT 52 HARBOR ISLAND OCEAN LOTS PB 31 P 161 PLAT IN DB1036P2633		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2015	$180,000	$306,100	$486,100	$6,898.19	$6,898.19
2014	$180,000	$306,100	$486,100	$6,769.89	$6,769.89
2013	$180,000	$306,100	$486,100	$6,542.66	$6,542.66
2012	$372,000	$326,623	$698,623	$8,543.82	$8,543.82
2011	$372,000	$326,623	$698,623	$8,406.33	$8,406.33
2010	$372,000	$326,623	$698,623	$8,292.72	$8,292.17
2009	$372,000	$326,623	$698,623	$8,121.28	$8,833.67
2008	$300,000	$361,100	$661,100	$8,641.65	$8,641.65
2007	$300,000	$361,100	$661,100	$8,259.26	$8,259.26
2006	$300,000	$361,100	$661,100	$7,505.61	$7,505.61

Sales Disclosure

NEXSEN|PRUET

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control

Mary D. Shahid
Member
Admitted in SC

16-RFR-60

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
JB Beachwood LLC

Dear Madam Clerk:

This office represents JB Beachwood LLC "Requestor," who owns beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 13 Beachwood East, Isle of Palms, and by property identification number 6041000043.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "… research activities of state agencies and educational institutions … provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

---

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.
[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attachm

EXHIBIT
C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

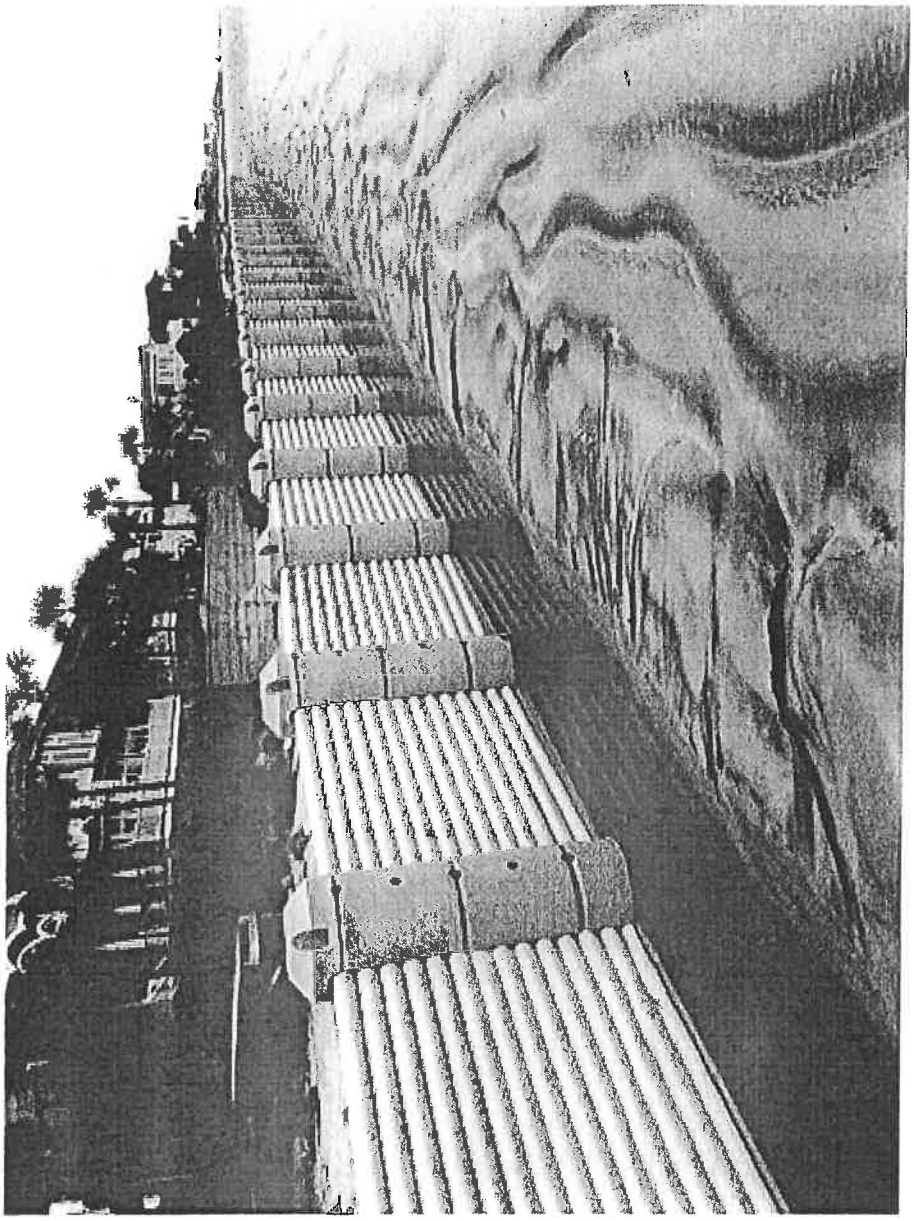


Exhibit A

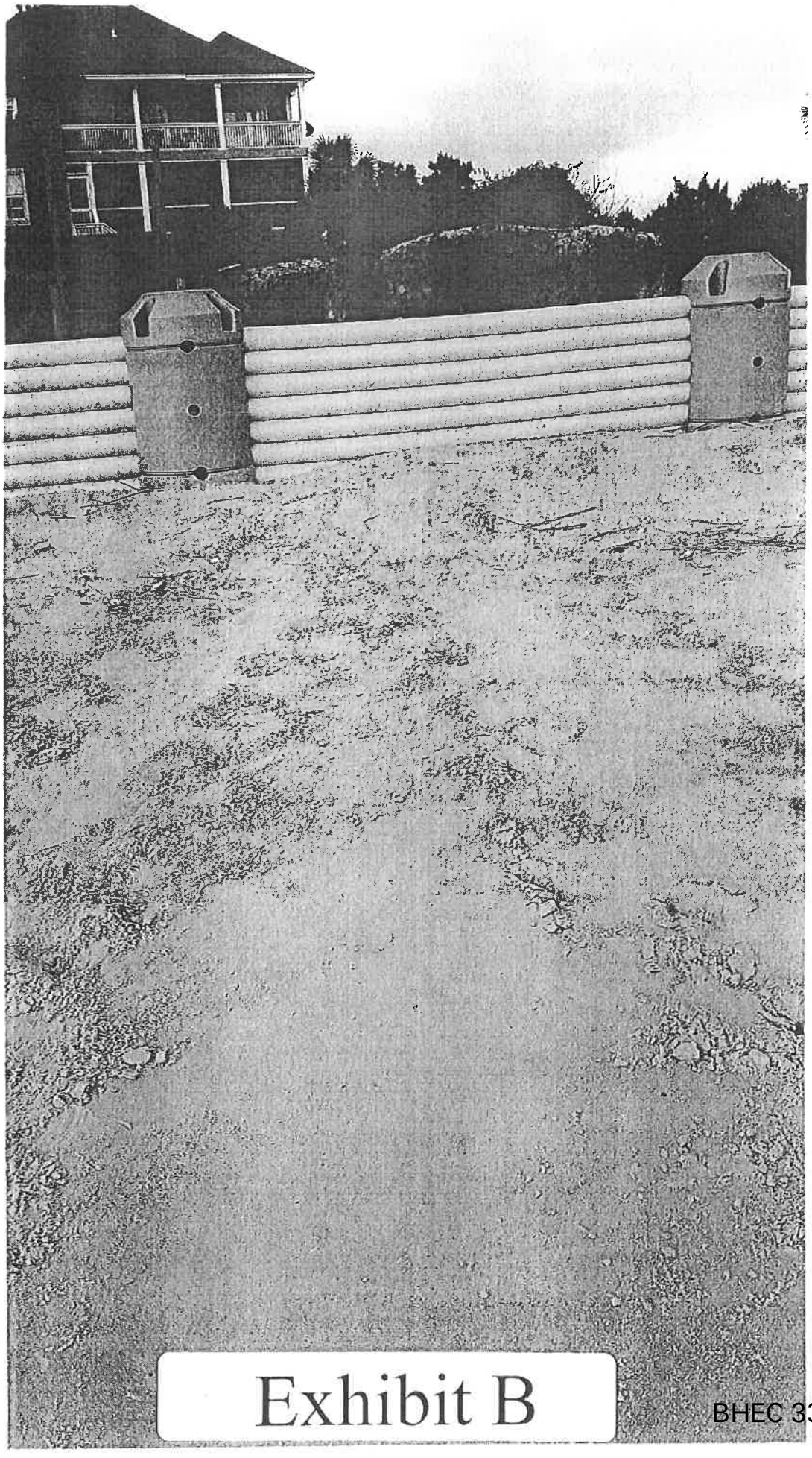
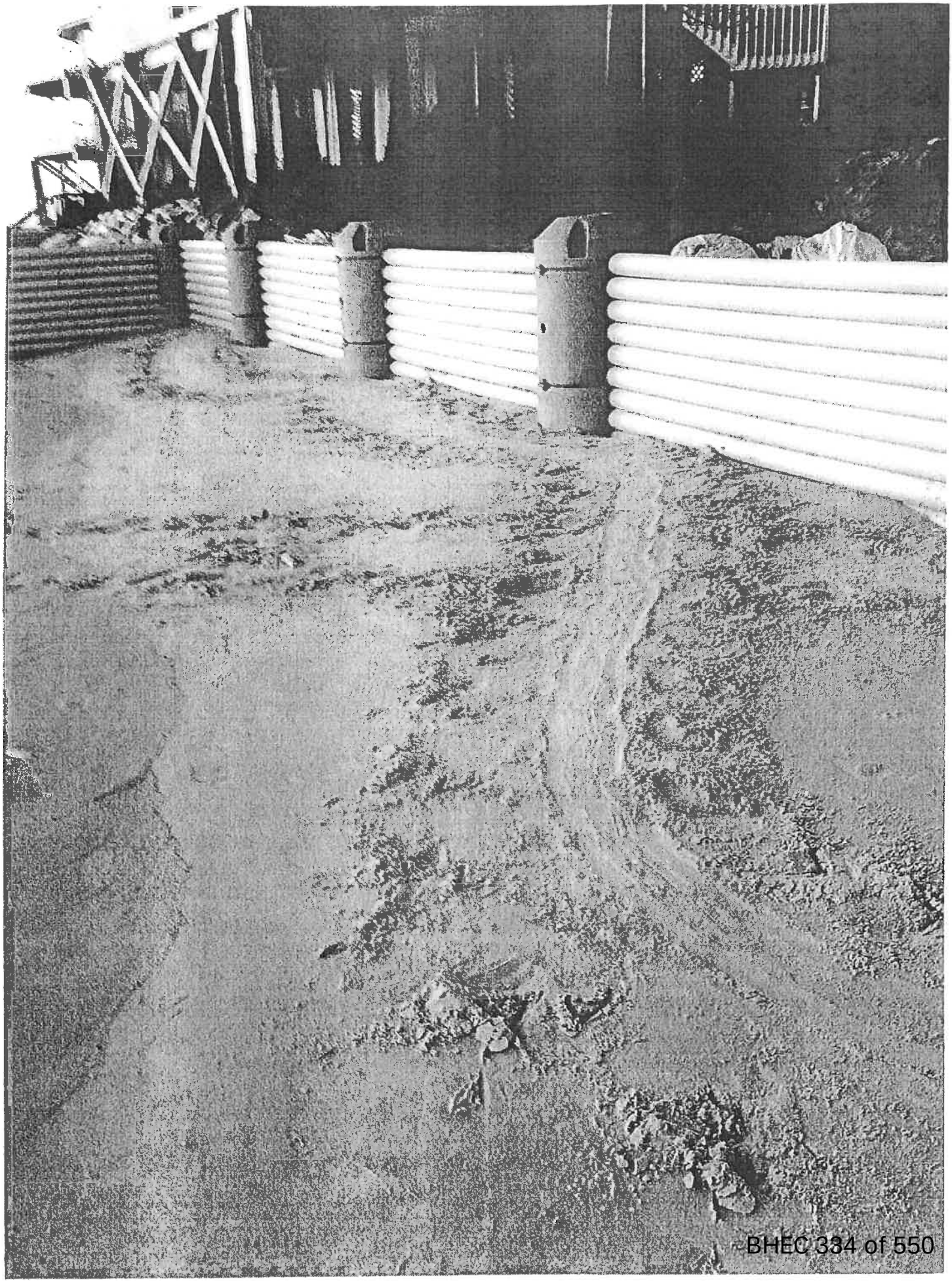


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT
D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	24	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	80.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	6	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	28	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	25	12	19	55	50	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	80
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	6	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.9
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	3	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3649	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

EXHIBIT
G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:42:23 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6041000043		13 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	JB BEACHWOOD LLC	Property Class Code	101 - RESID-SFR
Owner Address	1945 MADISON RD CINCINNATI OH 45206	Acreage	.0000
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 24 TRACT A BLK W PlatSuffix AN-29 PolTwp 002		

History Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,650,000	$600,000	$2,250,000	$26,217.00	$26,217.00
2014	$1,900,000	$800,000	$2,700,000	$30,429.00	$30,429.00
2013	$1,900,000	$800,000	$2,700,000	$8,640.00	$8,640.00
2012	$1,900,000	$800,000	$2,700,000	$8,742.60	$8,742.60

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
BERNSTEIN JAMES M	0302 495	1/3/2013	G		$5
BERNSTEIN JAMES M	0302 492	1/3/2013	G		$5
BAXTER NANCY E	0193 509	6/10/2011	G		$2,700,000
BAXTER NANCY E	S627 445	5/31/2007	G		$5
GWINN JOHN C	R324 560	4/15/1999	G		$650,000
STATE OF SOUTH CAROLINA THE	N236 207	12/20/1993	G		$425,000
LUCAS DAVID H	C229 684	7/7/1993	G		$425,000
SCHACHTER JEROME M	Y159 393	12/3/1986	G		$500,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	2001	1.5	04	3,426	

NEXSEN|PRUET

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control

Mary D. Shahid
Member
Admitted in SC

16-RFR-60

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
William H. Longfield and Nancy Longfield

Dear Madam Clerk:

This office represents William H. Longfield and Nancy Longfield "Requestors," who own beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestors' property is identified as 16 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000091.

This Request is related to a letter sent to Requestors on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestors' property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestors received notification by letter, Requestors have standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPCHART:1767997.1

requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestors' property has suffered from erosion for several years. Since 2008, Requestors have obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestors began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestors paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestors ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further

---

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

[5] It concerns Requestors and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestors' property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestors understand that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestors completely agree with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

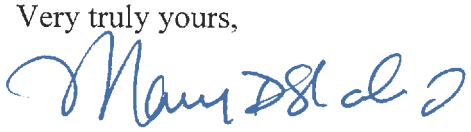
According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestors respectfully request that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestors ask that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,



Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=78&return_page=&

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attach.

EXHIBIT
C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

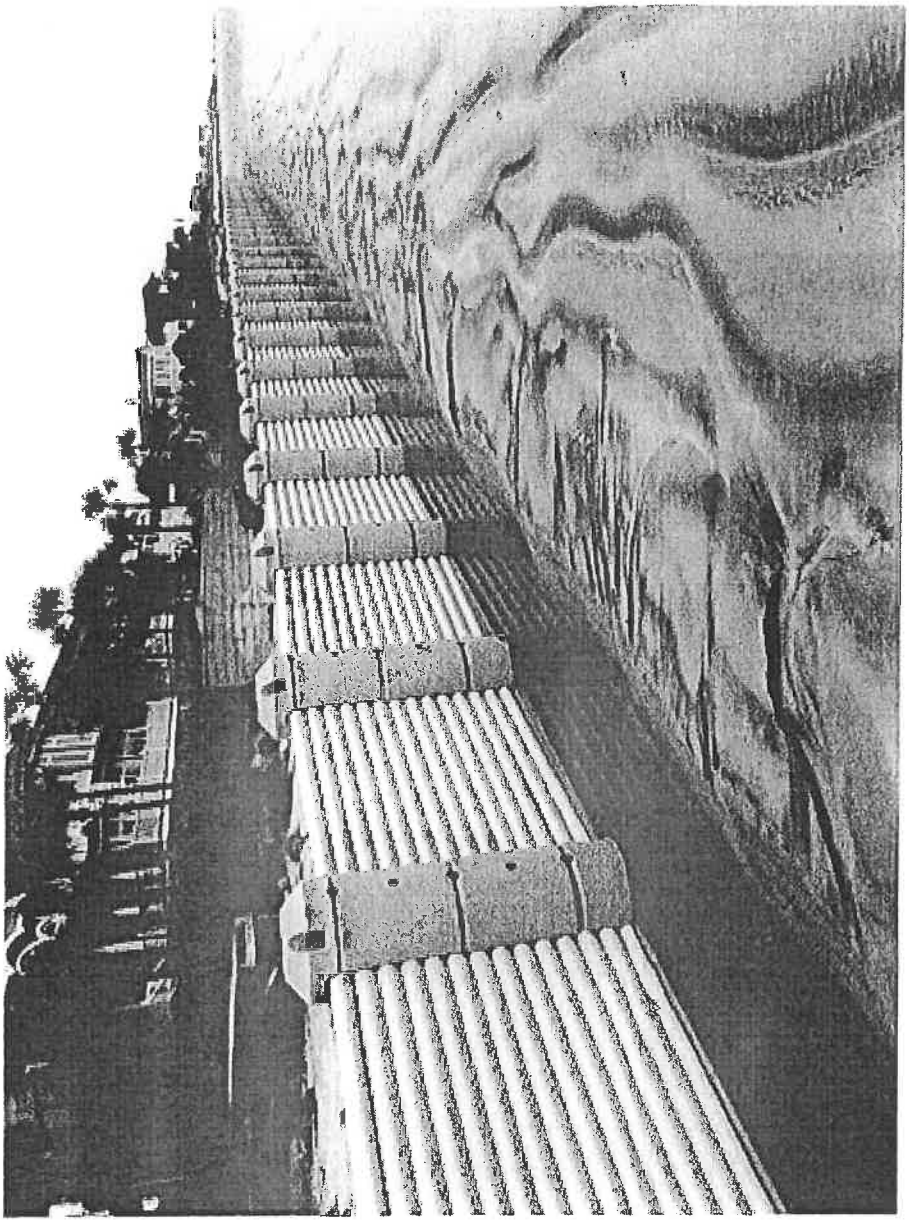

Exhibit A

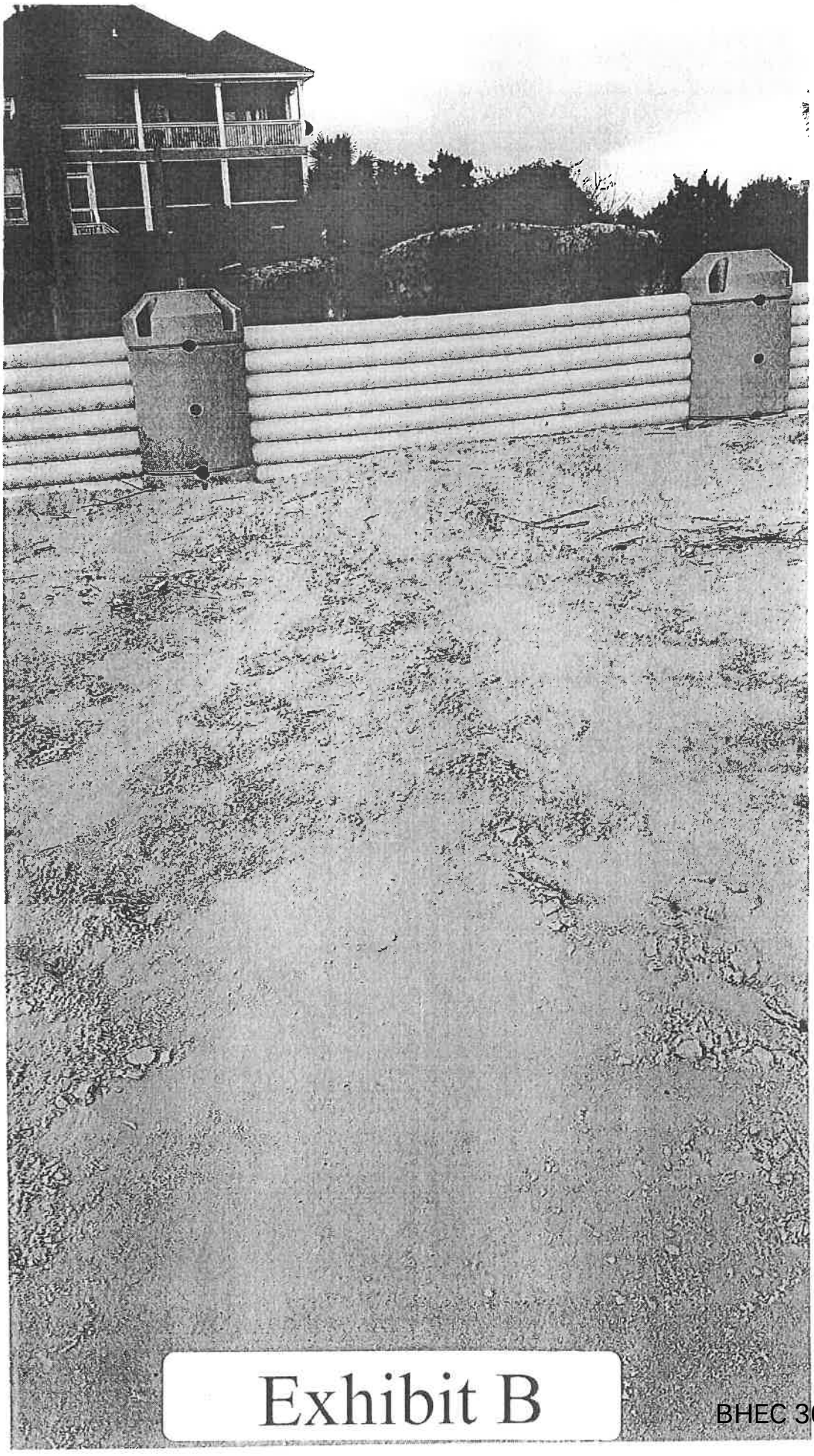

Exhibit B

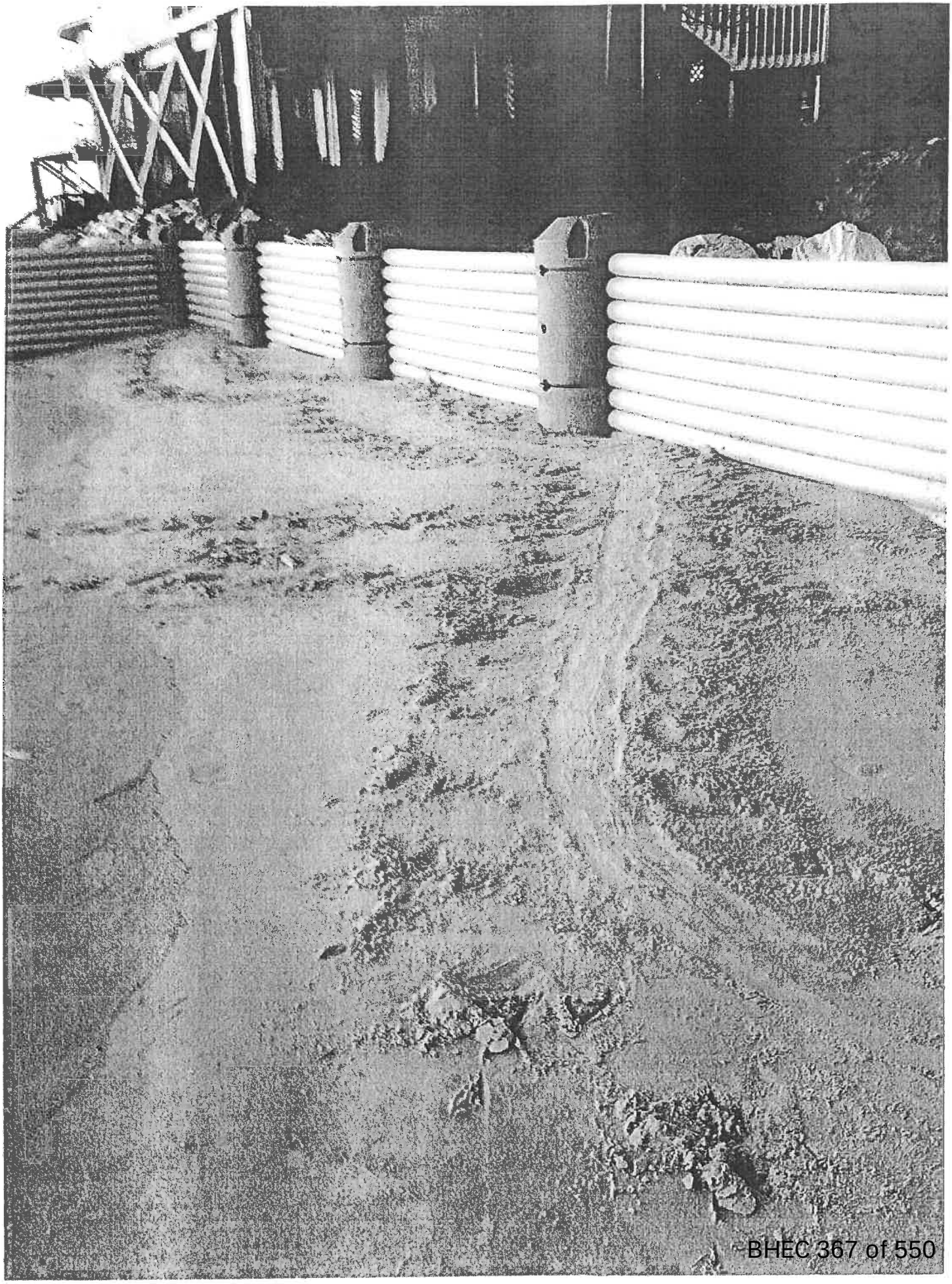

EXHIBIT D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.6	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	26	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	52	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	60.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	103	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3649	1527	1030	5408	5621	7.6	7	25.8

Species Beach Report

EXHIBIT

E

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

EXHIBIT
G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:49:44 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6041000091		16 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	LONGFIELD WILLIAM H TRUST LONGFIELD NANCY S TRUST	Property Class Code	101 - RESID-SFR
		Acreage	.0000
Owner Address	37 MEETING ST CHARLESTON SC 29401-2736		
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 30 TRACT A BLK X PlatSuffix AO-39 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,650,000	$720,000	$2,370,000	$27,608.04	$27,608.04
2014	$1,899,999	$480,000	$2,379,999	$26,838.60	$26,838.60
2013	$1,899,999	$480,000	$2,379,999	$26,910.00	$26,910.00
2012	$1,899,999	$480,000	$2,379,999	$26,962.36	$26,962.36

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
LONGFIELD WILLIAM H	0122 332	5/12/2010	G		$1
JEROZAL ELSIE J	J545 355	7/15/2005	G		$5,250,000
NATIONSBANK OF SOUTH CAROLINA N.A.	D232 190	7/29/1993	G		$425,000
C AND T PROPERTIES	Z220 415	11/19/1992	G		$383,686

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1994	2.5	05	4,804	
R01	MISC	Miscellaneous	1994	0	0		528

NEXSEN|PRUET

RECEIVED
JUL 21 2016
Clerk, Board of Health
& Environmental Control
16-RFR-60

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Phillip Derrick Hampton and Travis E. Hampton

Dear Madam Clerk:

This office represents Phillip Derrick Hampton and Travis E. Hampton "Requestors," who own beachfront property on Harbor Island in Beaufort County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestors' property is identified as 130 Harbor Drive N, Saint Helena Island, South Carolina 29920, and by property identification number R300 020 00C 0032 0000.

This Request is related to a letter sent to Requestors on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestors' property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestors received notification by letter, Requestors have standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Harbor Island is a residential coastal community. Requestors' property has suffered from erosion for several years. Since 2008, Requestors have obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestors began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestors paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestors ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

[5] It concerns Requestors and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Harbor Island is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestors' property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program -- and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestors understand that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestors completely agree with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestors respectfully request that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestors ask that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

EXHIBIT
C

Attach

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Executive Director
Amelia A. Thompson
Staff Attorney
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June 15, 2016

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U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

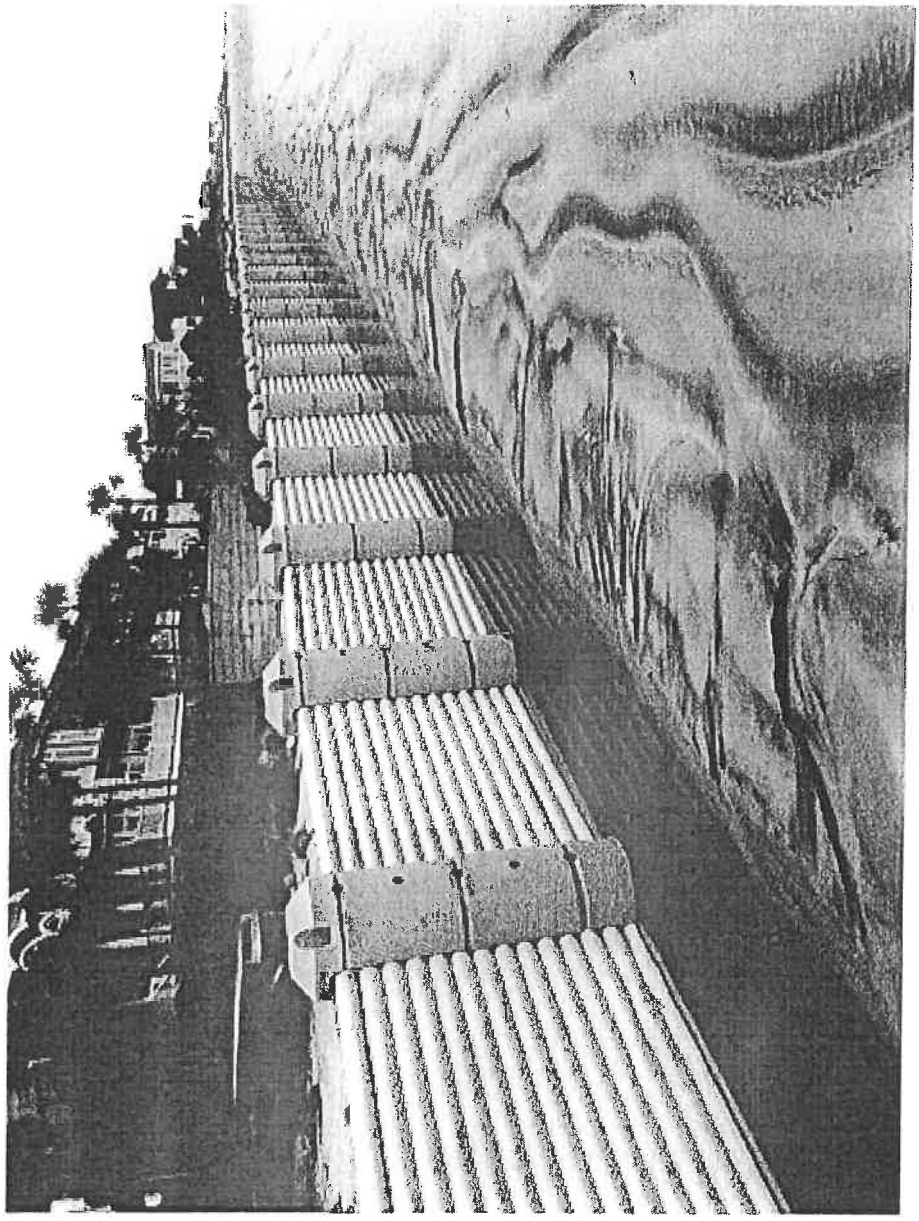


Exhibit A

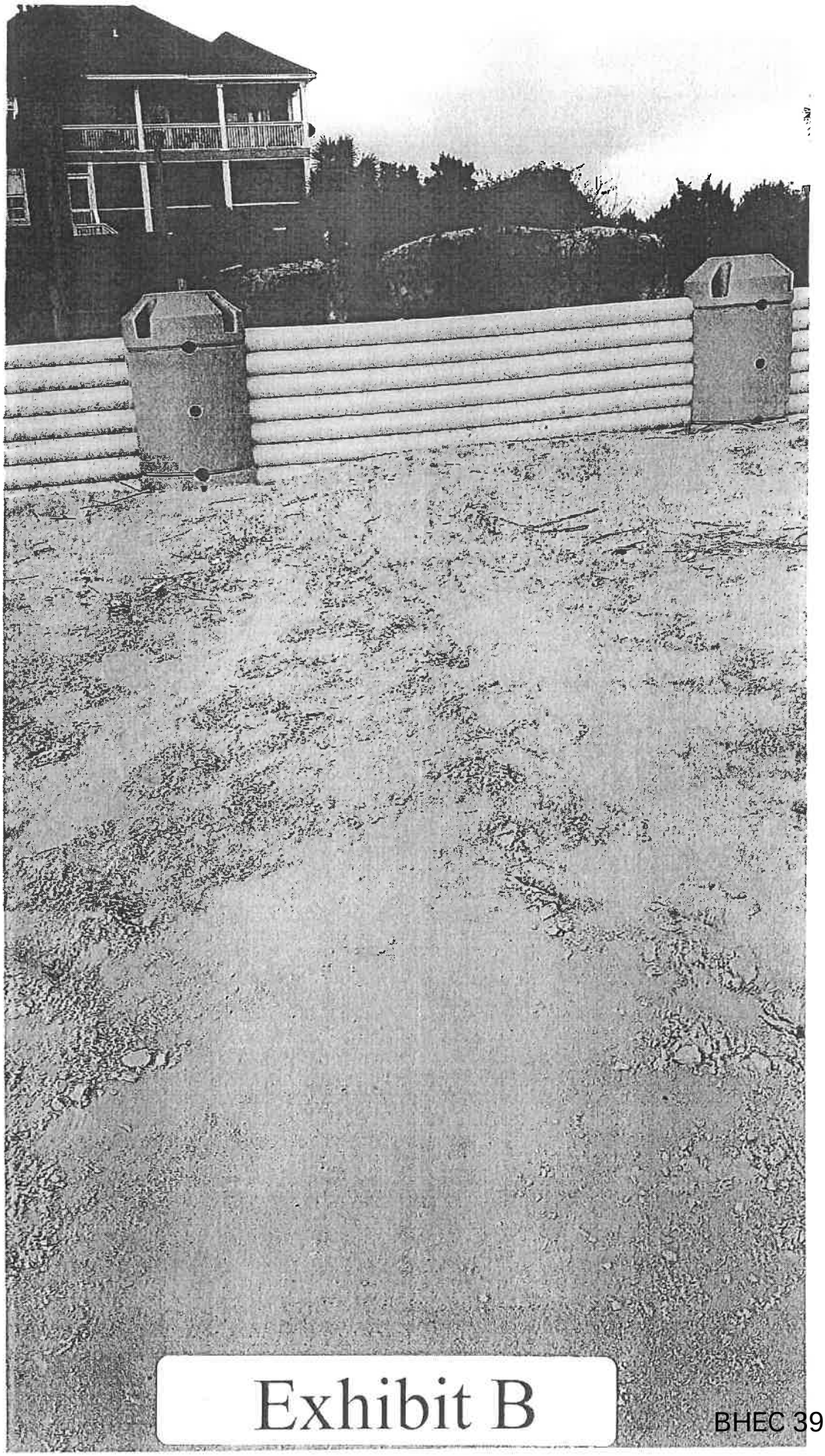
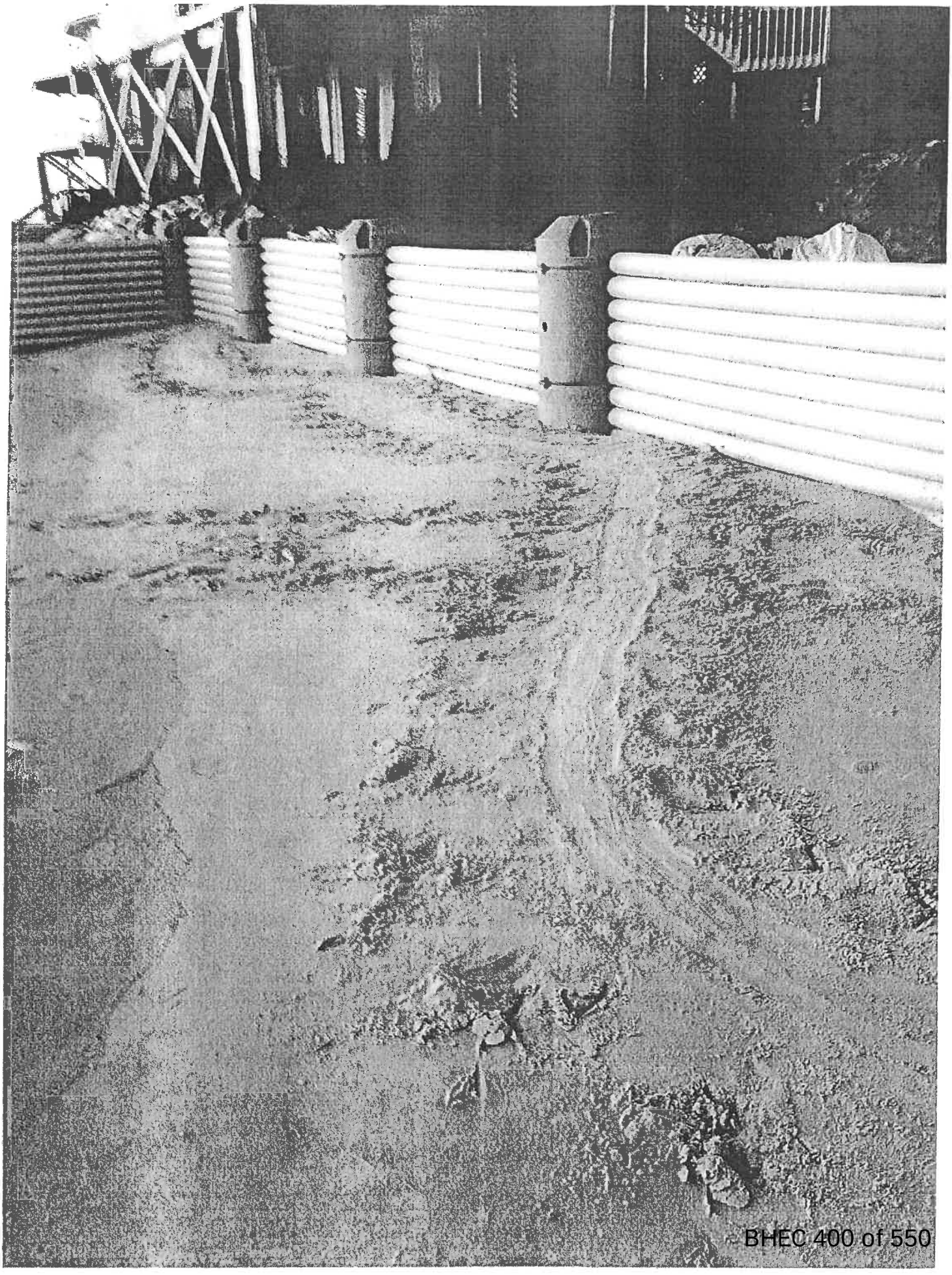


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT
D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	84	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	380	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	3	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	22
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	60.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	103	23	45	129	194	13.2	12.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	66.5
Kiawah Island	0	0	45	28	146	176	77	98	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	25.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	68	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	21	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	6	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	67	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	68	42.2	40.1	61.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	8	0	884	930	2982	3645	1527	1028	5408	5621	7.8	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT

G

South Carolina Department of

Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Overview

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R300 020 00C 0032 0000	02040062	130 HARBOR DR,	7/16/2016

Current Parcel Information

Owner	HAMPTON PHILLIP DERRICK HAMPTON TRAVIS E	Property Class Code	ResImp SingleFamily
Owner Address	365 WOODLAND WAY DUBLIN GA 31021	Acreage	.0000
Legal Description	LOT 56 HARBOR ISLAND OCEAN LOTS PB31P161 JR59800 6/86 JR59800 6/86		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2015	$240,000	$417,100	$657,100	$9,293.92	$9,293.92
2014	$265,000		$265,000	$3,668.88	$3,668.88
2013	$240,000		$240,000	$3,211.15	$3,211.15
2012	$620,000		$620,000	$4,200.24	$4,200.24
2011	$620,000		$620,000	$4,132.34	$4,132.34
2010	$620,000		$620,000	$4,076.24	$4,076.24
2009	$620,000		$620,000	$3,991.57	$3,991.57
2008	$300,000		$300,000	$3,904.80	$3,904.80
2007	$300,000		$300,000	$3,733.13	$3,733.13
2006	$300,000		$300,000	$3,391.13	$3,391.13

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Hasmuku P. Rama

Dear Madam Clerk:

This office represents Hasmuku P. Rama "Requestor," who owns beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 19 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000094.

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "… research activities of state agencies and educational institutions … provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

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[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "… of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

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[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

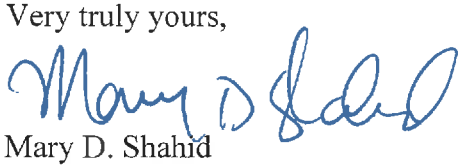
According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,



Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

www.scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2014&version_id=7&return_page=&version_title

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

EXHIBIT

Attach C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

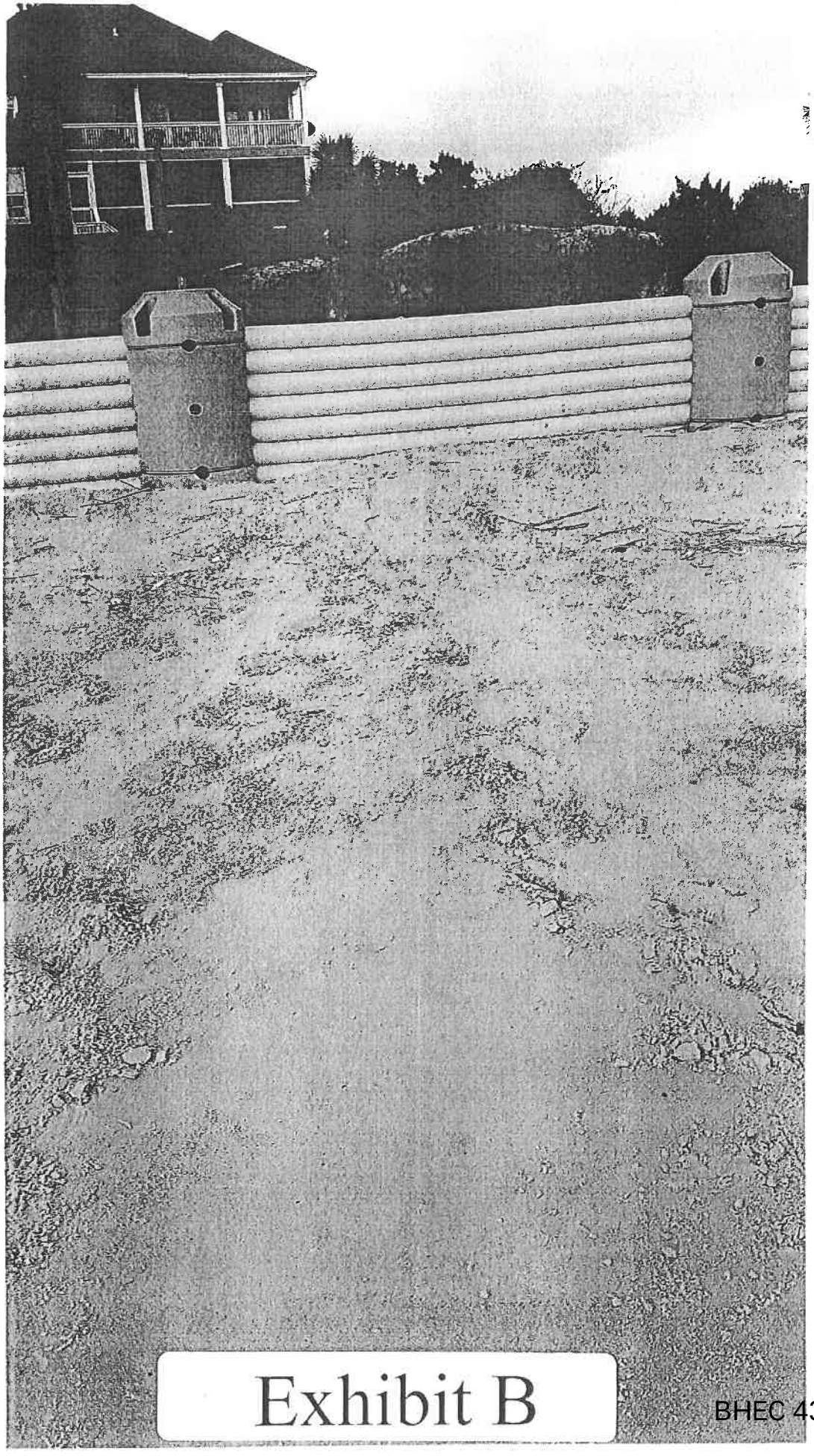


Exhibit B

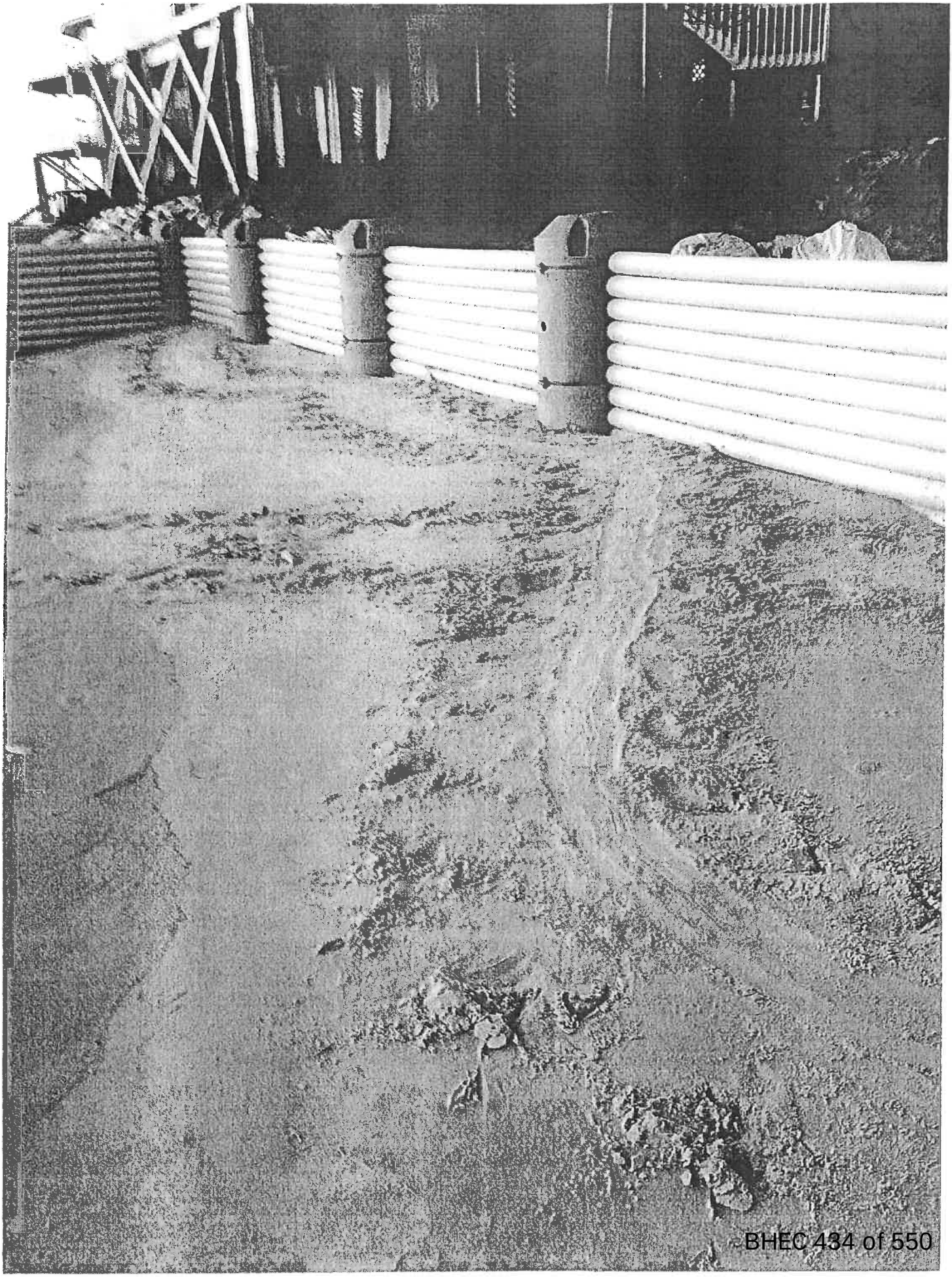
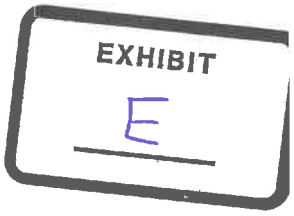


EXHIBIT D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	25.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	80.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	368	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	80
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	67	149	45	89	134	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3649	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report



From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT
G

South Carolina Department of Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:54:31 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6041000094		19 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	RAMA HASMUKU P	Property Class Code	101 - RESID-SFR
Owner Address	60 POINTE CIR GREENVILLE SC 29615	Acreage	.0000
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 27 TRACT A BLK X PlatSuffix AO-39 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,650,000	$980,000	$2,630,000	$30,621.96	$30,621.96
2014	$1,899,999	$1,200,000	$3,099,999	$34,917.00	$34,917.00
2013	$1,899,999	$1,200,000	$3,099,999	$35,010.00	$35,010.00
2012	$1,899,999	$1,200,000	$3,099,999	$35,078.20	$35,078.20

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
PULIDO AND	0153 660	10/26/2010	G		$3,100,000
CRAWFORD GORDON	Y458 118	7/23/2003	G		$3,137,500
MCNALLY THOMAS M	M328 622	6/9/1999	G		$1,050,000
QUINN RICHARD H	F216 688	7/15/1992	G		$475,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	2000	2.0	07	4,900	

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Michael G. Ricci and Mary M. Ricci

Dear Madam Clerk:

This office represents Michael G. Ricci and Mary M. Ricci "Requestors," who own beachfront property on Harbor Island in Beaufort County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestors' property is identified as 116 Harbor Drive N, Saint Helena Island, South Carolina 29920, and by property identification number R300 020 00C 0025 0000.

This Request is related to a letter sent to Requestors on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestors' property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestors received notification by letter, Requestors have standing to challenge removal of the WDS.

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Harbor Island is a residential coastal community. Requestors' property has suffered from erosion for several years. Since 2008, Requestors have obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestors began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestors paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

… provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestors ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "… of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

[5] It concerns Requestors and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Harbor Island is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestors' property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestors understand that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestors completely agree with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestors respectfully request that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestors ask that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&n

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49 (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

EXHIBIT C

Attachn

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

Amy E. Armstrong
Executive Director
Amelia A. Thompson
Staff Attorney
Jessie A. White
Staff Attorney

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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

Exhibit A

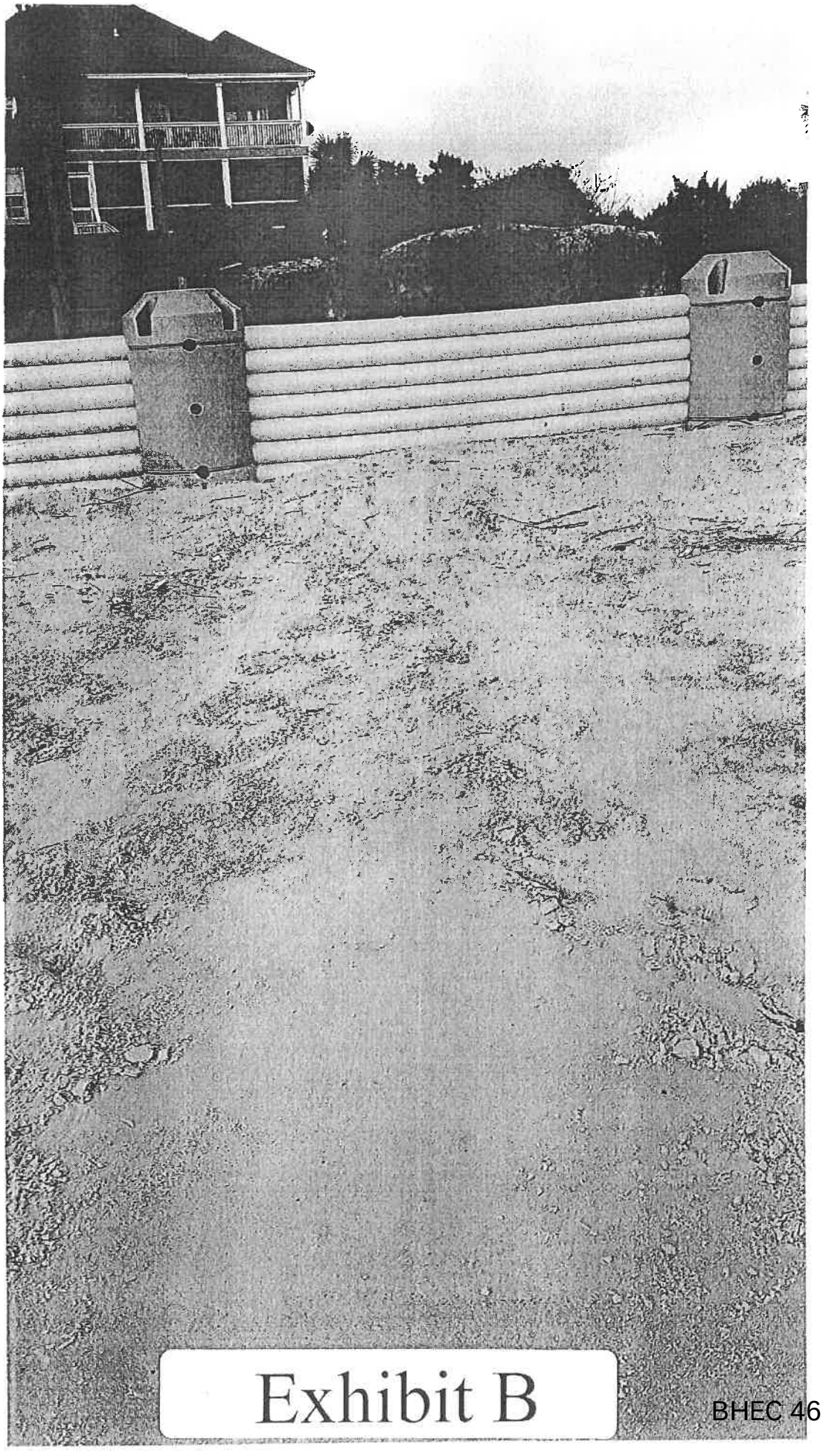
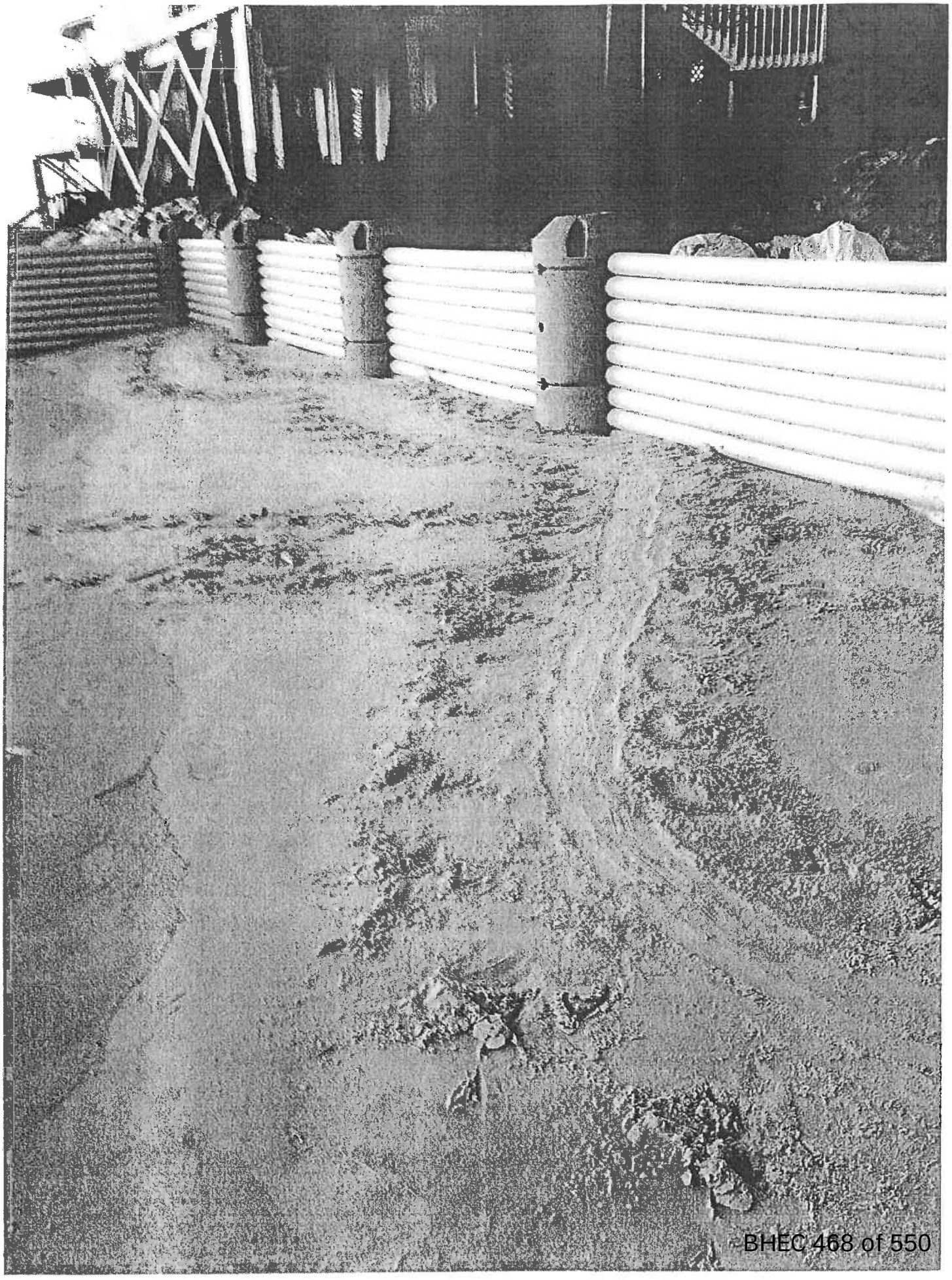


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT D
BHEC 471 of 550

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	69.4
Cape Island	0	0	180	229	725	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	20	34	111	10	62	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	24	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	09.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	103	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	36	35	12	19	65	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	60
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	6	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	19.2	16.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3649	1527	1026	5408	5621	7.6	7	25.8

Species Beach Report

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT
G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Beaufort County, South Carolina *generated on 7/19/2016 10:36:05 AM EDT*

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R300 020 00C 0025 0000	02039993	116 HARBOR DR,	7/16/2016

Current Parcel Information

Owner	RICCI MICHAEL G MARY M JTROS	Property Class Code	ResImp SingleFamily
Owner Address	2 JOHN BROWN RD KATONAH NY 10536	Acreage	.2600
Legal Description	LOT 49 HARBOR ISLAND OCEAN LOTS PB31P161 JR59798 6/86 PLAT IN DB860 PG628		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2015	$180,000	$271,900	$451,900	$6,384.68	$6,384.68
2014	$180,000	$271,900	$451,900	$6,270.32	$6,270.32
2013	$180,000	$271,900	$451,900	$6,059.13	$6,059.13
2012	$372,000	$348,808	$720,808	$8,788.32	$8,788.32
2011	$372,000	$348,808	$720,808	$8,646.45	$8,646.45
2010	$372,000	$348,808	$720,808	$8,529.24	$8,529.24
2009	$372,000	$348,808	$720,808	$8,352.36	$9,318.92
2008	$300,000	$399,600	$699,600	$9,116.98	$9,116.98
2007	$300,000	$399,600	$699,600	$8,715.44	$8,715.44
2006	$300,000	$399,600	$699,600	$7,917.90	$7,917.90

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
LYNCH DAN M NANCY L JTROS	860 628	5/17/1996	Fu		$266,000
AMUSEMENT RENTALS INC	459 781	9/1/1986	Ma		$59,500
HARBOUR ISLAND DEV CO	376 518	8/1/1983	Fu		$50,000
HARBOUR ISLAND DEV CO	295 1943	1/1/1980	Fu		$0
		12/31/1776	Or		$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size
R01	DWELL	Dwelling	1990	2.0	01	1,360	

Features & Exterior Features

Building	Type	Feature Code	Description	No. / Sq.Ft.	Value
R01	DWELL	COOLING	Central air	1	$5,260
R01	DWELL	EXT. COVER	Wood siding-cedar	1	$0
R01	DWELL	FOUNDATION	Full Slab	1	$0
R01	DWELL	HEATING	Heat pump	1	$7,200

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Michael A. Safdi and Rosemary G. Safdi

Dear Madam Clerk:

This office represents Michael A. Safdi and Rosemary G. Safdi "Requestors," who own beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestors' property is identified as 17 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000092.

This Request is related to a letter sent to Requestors on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestors' property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestors received notification by letter, Requestors have standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

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Nexsen Pruet, LLC
Attorneys and Counselors at Law

requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestors' property has suffered from erosion for several years. Since 2008, Requestors have obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestors began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestors paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestors ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "... of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further

---

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

[5] It concerns Requestors and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestors' property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestors understand that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestors completely agree with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestors respectfully request that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestors ask that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,

Mary D. Shahid

MDS/amc
Enclosures

MCHAR1:17079451.1

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2

The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

www.scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2014&version_id=7&return_page=&version_title

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT B

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

Attachr

EXHIBIT
C

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Amelia A. Thompson
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

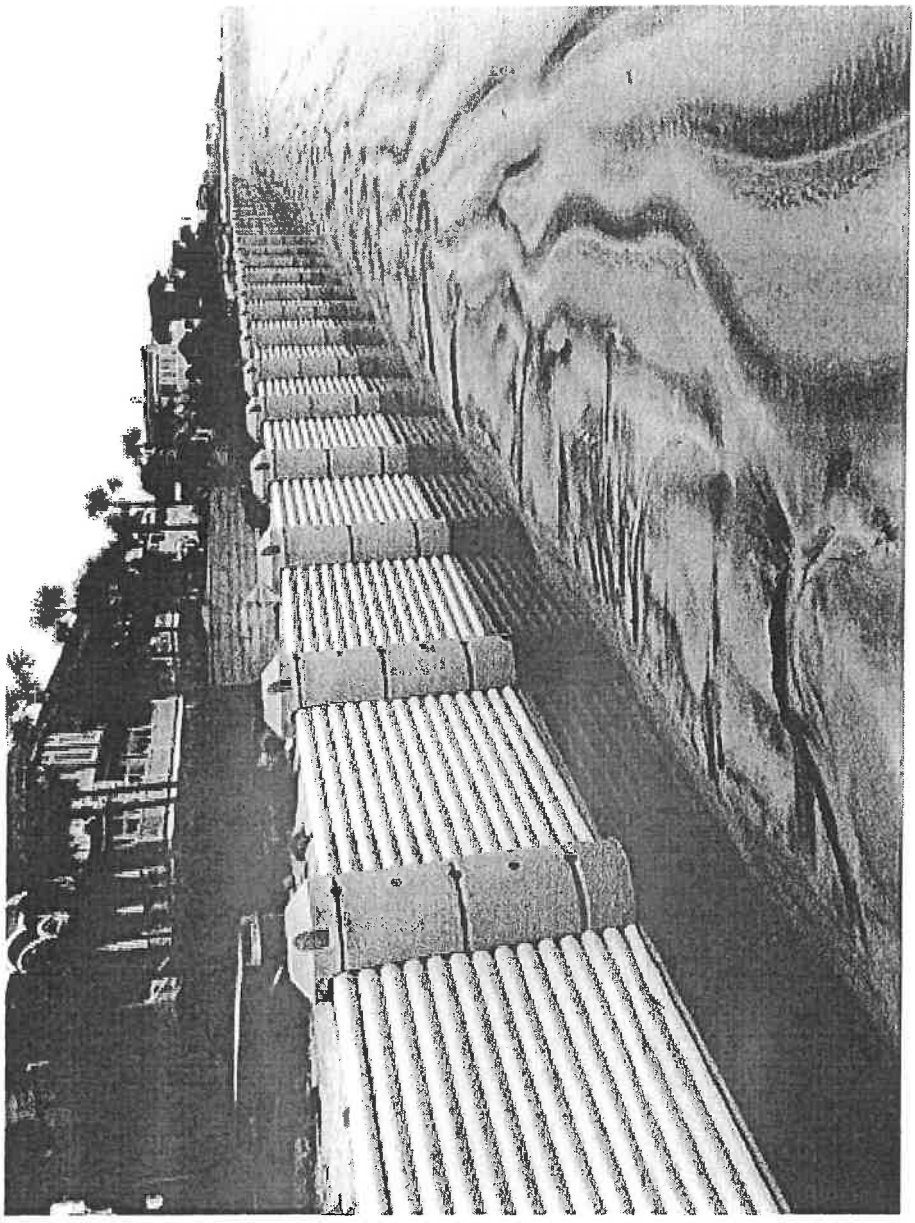


Exhibit A

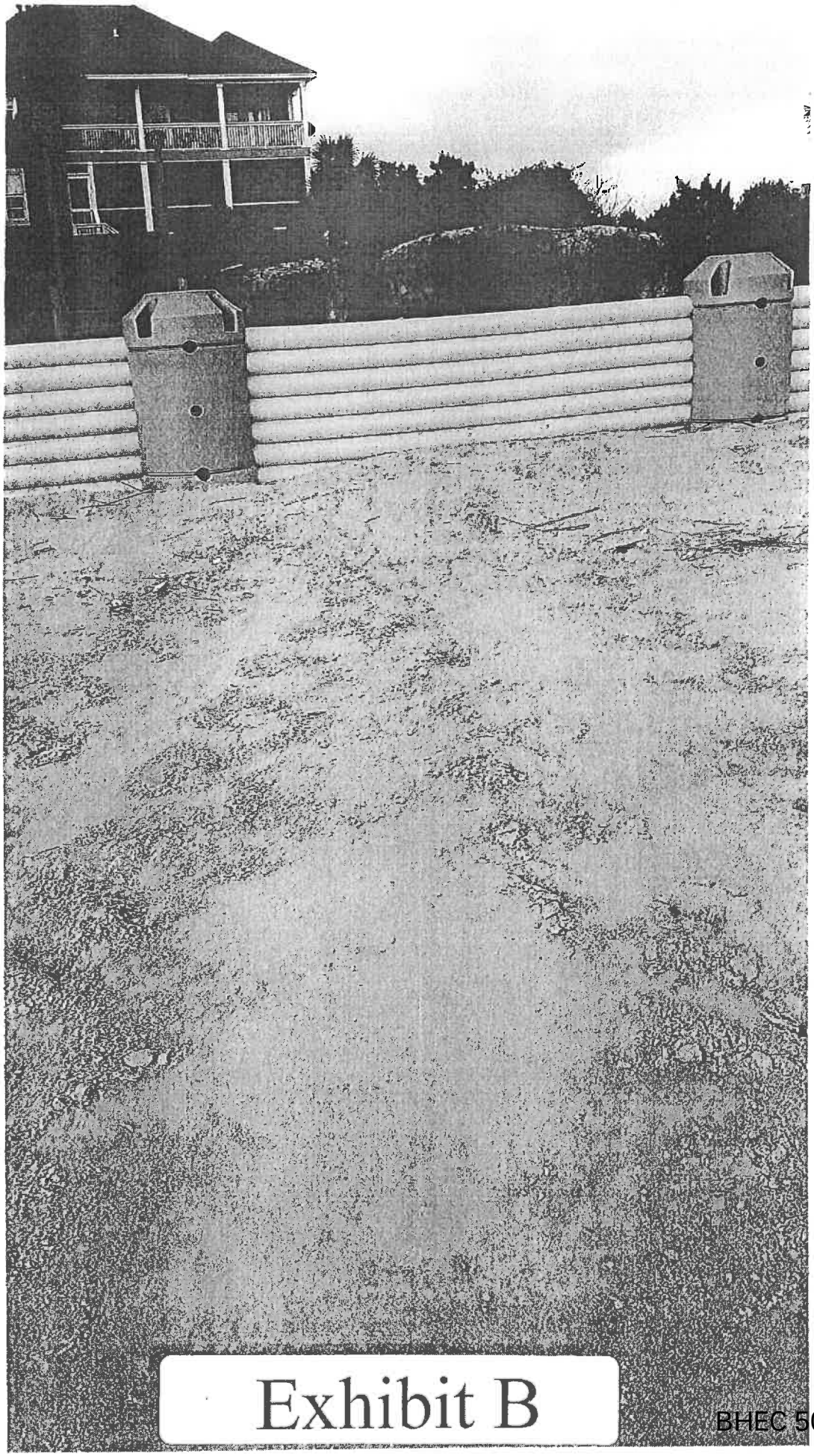
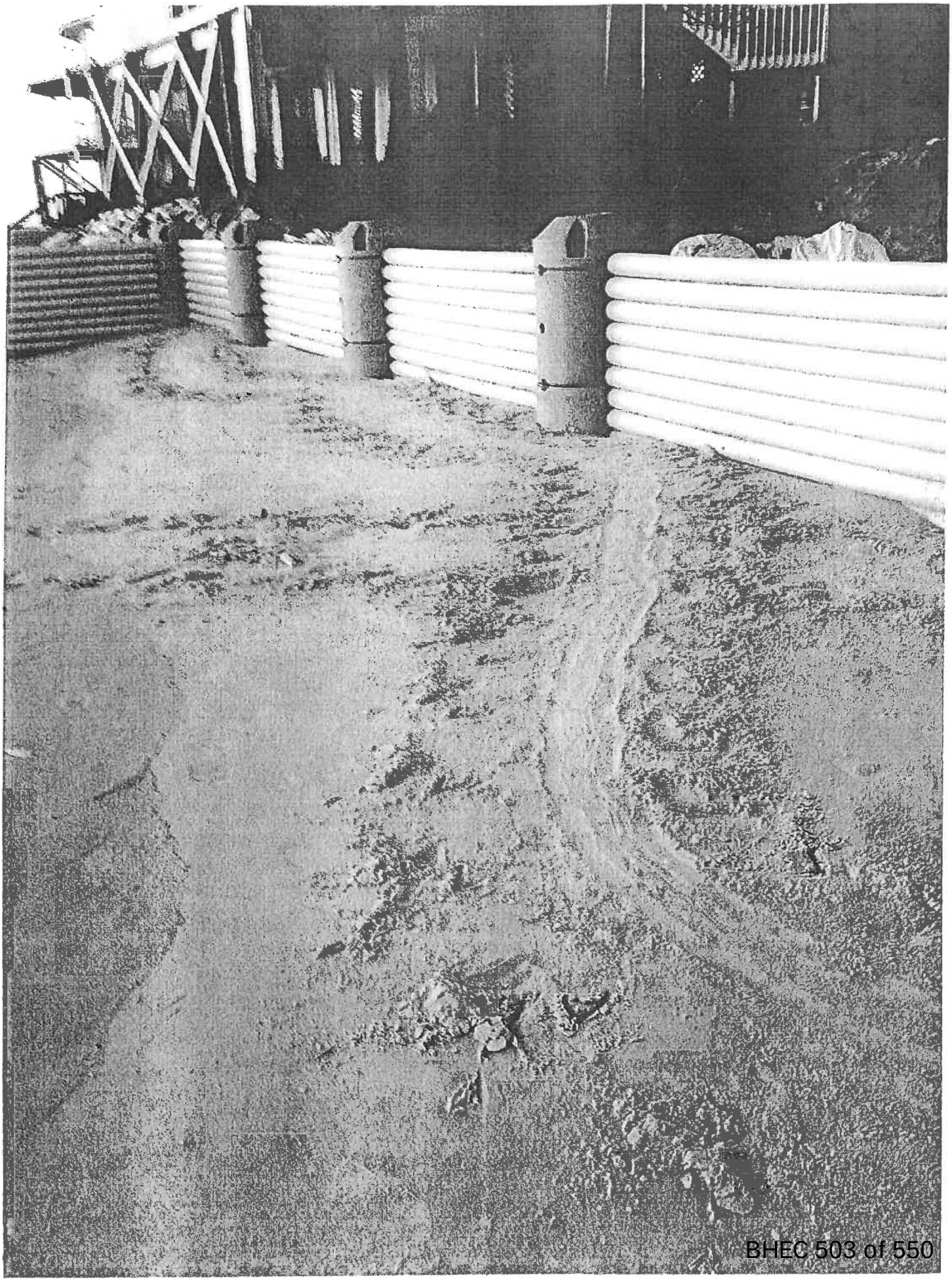


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT
D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	64	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	26.3
Edingsville Beach	0	0	9	28	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	80.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	108	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	68	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	80
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	6	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	18.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	864	930	2982	3849	1527	1038	5408	5621	7.6	7	25.8

Species Beach Report

EXHIBIT

E

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT

G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT

H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:51:50 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
6041000092		17 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	SAFDI MICHAEL A CO TRUSTEE SAFDI ROSEMARY G CO TRUSTEE	Property Class Code	101 - RESID-SFR
		Acreage	.0000
Owner Address	2836 LOSANTIRIDGE AVE CINCINNATI OH 45213-1032		
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 29 TRACT A BLK X PlatSuffix AO-39 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,650,000	$913,000	$2,563,000	$8,721.06	$8,721.06
2014	$1,899,999	$1,015,000	$2,914,999	$9,200.65	$9,200.65
2013	$1,899,999	$1,015,000	$2,914,999	$32,928.75	$32,928.75
2012	$1,899,999	$1,015,000	$2,914,999	$32,992.88	$32,992.88

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
SAFDI MICHAEL A	V317 593	1/4/1999	G		$5
BOHN PENELOPE REINSCH	W207 432	11/1/1991	G		$400,000
REINSCH J LEONARD	W207 406	11/1/1991	G		$9

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	2007	2.0	04	4,058	

RECEIVED
JUL 21 2016
Clerk, Board of Health
and Environmental Control
16-RFR-60

NEXSEN|PRUET

Mary D. Shahid
Member
Admitted in SC

July 21, 2016

BY HAND

Lisa Lucas Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review Conference
Ruth Ann Skinner

Dear Madam Clerk:

This office represents Ruth Ann Skinner Marital Trust "Requestor," the record owner of beachfront property on Isle of Palms in Charleston County, South Carolina, for purposes of this Request for Final Review Conference ("Request") submitted in accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60 et seq. Requestor's property is identified as 15 Beachwood East, Isle of Palms, South Carolina 29451, and by property identification number 6041000090

This Request is related to a letter sent to Requestor on July 8, 2016, by the Office of Ocean and Coastal Management of the South Carolina Department of Health and Environmental Control ("the Department") which ordered removal of a wave dissipation system ("WDS") installed on the beach adjacent to Requestor's property. A copy of this letter is attached as Exhibit A to this Request.[1] The letter requires removal of the entire WDS including all horizontal panels, vertical pilings, piling casings and any other items associated with the WDS.

[1] The attached letter is addressed to Requestor Mike Ricci, but the undersigned is informed and believes identical letters were sent to the multiple Requestors represented by the undersigned. The undersigned is unable to obtain copies of all of the notifications sent to the multiple Requestors due to the short response time provided under S. C. Code Ann § 44-1-60. Regardless of whether Requestor received notification by letter, Requestor has standing to challenge removal of the WDS.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1788
F 843.414.8242
E MShahid@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

I am attaching my law firm's check in the amount of $100.00 made payable to the Department as the filing fee for this Request.

The Department's action of July 8, 2016, constitutes a decision subject to review as provided by S.C. Code Ann. § 44-1-60. In accordance with § 44-1-60(A), "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this action." "Contested case" is broadly defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." § 1-23-310(3). This request for Final Review Conference is timely.

GROUNDS FOR REVIEW

Isle of Palms is a residential coastal community. Requestor's property has suffered from erosion for several years. Since 2008, Requestor has obtained permits and emergency orders authorizing various actions to defend against erosion including beach renourishment, sand scraping, and placement of sand bags on their properties. In 2015 Requestor began participating in a pilot study of a wave dissipation system ("WDS") developed by S. I. Systems, LLC and conducted by a research team employed at The Citadel. Requestor paid approximately $60,000.00 to cover the costs of the WDS, installation of the system on the beach and monitoring during the study by the team from The Citadel.

The Department has issued a total of four acknowledgement letters for the installation of the devices on an experimental basis on Harbor Island, and at three locations on the Isle of Palms: Beachwood East, Seascape Wild Dunes and Wild Dunes Ocean Club. The pilot study on the WDS was authorized by South Carolina law as part of the General Appropriations Act for 2014-2015. Budget Proviso 34.51[2] specifically permitted initiation of the Wave Dissipation Device Pilot Program, as follows:

> From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.
>
> The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or

[2] Amended in 2015-2016 as Budget Proviso 43.38.

> expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.
>
> A 'qualified wave dissipation device' is a device that:
>
> (1) is placed mostly parallel to the shoreline;
>
> (2) is designed to dissipate wave energy;
>
> (3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;
>
> (4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;
>
> (5) does not negatively impact or inhibit sea turtle nesting or other fauna;
>
> (6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and
>
> (7) otherwise prevent down-coast erosion, protects property, and limits negative impact to public safety and welfare, beach access, and the health of the beach dune system.[3]

S.C. Code Section 48-39-130(D)(2) addresses permits required for utilization of critical areas and confirms that no permit was needed to be applied for to utilize a critical area for "... research activities of state agencies and educational institutions ... provided that such activity cause no material harm to the flora, fauna, physical or aesthetic resources of the area."[4]

---

[3] Obtained from www.statehouse.gov. See Exhibit B. The Budget Proviso was renewed for the 2015-2016 fiscal year and included in the General Appropriations Act as Budget Proviso 34.48. Subparagraph (4) was amended to state that the 72-hour deployment requirement applied to "the horizontal panels" of the system.

[4] S.C. Code Section 48-39-130 was amended on June 2, 2016. Subsection (D)(2) was not affected.

The WDS was installed on Harbor Island and the Isle of Palms in compliance with the requirements outlined above. In addition, it is important to note that the Department sought the input of the South Carolina Department of Natural Resources ("DNR") when the first WDS was installed along the South Carolina coastline, at Seascape Wild Dunes on the Isle of Palms, to ensure that measures were undertaken to prevent material harm to the environment including flora and fauna. DNR responded to that request identifying potential impact on the nesting behavior of sea turtles as a primary concern, and DNR recommended that the Department require The Citadel research team to involve and report to DNR's Marine Turtle Conservation Program and Nest Protection Project Leaders ("MTCP-NPPL") throughout project construction and for the duration of the project. This recommendation was maintained for all installations, and MTCP-NPPL has been involved in monitoring sea turtle activity around all of the installed WDS.

MTCP-NPPL maintains a website at www.seaturtle.org which indicates that monitoring of sea turtle activity has been carried out by DNR since the late 1970's. All 48 of the state's beaches are currently monitored for nestings and strandings. Data compiled through observations of sea turtles is reported on the website.

The letter received by Requestor ordering removal of the WDS confirms that the Department's decision was based on a notification the Department received "… of concerns regarding interactions occurring between sea turtle species and the WDS." The letter references correspondence received by the Department from the South Carolina Environmental Law Project ("SCELP") dated June 15, 2016, attached as Exhibit C that provided 60 day-notice of SCELP's intent to sue the Department for an alleged violation of the taking prohibition of the Endangered Species Act, 16. U.S.C. § 1538(a)(1)(b)[5]. On page 3 of SCELP's letter, it is specifically alleged that "DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities."[6] Photographs of sea turtle tracks were attached to SCELP's letter and alleged to show evidence of the "take." The letter alleged further that "the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina are the direct cause of harm to several turtle species

[5] It concerns Requestor and counsel that the Department has given no weight to the protections afforded by the Eleventh Amendment of the United States Constitution which provide State officials sovereign immunity from private suits alleging violations of federal laws.

[6] Emphasis added.

listed as endangered."[7] As stated in the Department's letter "[b]ecause of these concerns, the removal of the device by the end of the study period is necessary."

SCELP's letter provides nothing else besides photographs as proof of prevention of nesting activities. SCELP's letter fails to acknowledge the fact that sea turtles are known to sometimes crawl up onto a beach but not make a nest. This behavior is known as a "false crawl," and DNR's website differentiates between a "false crawl attempt" and a "false crawl u-turn," as follows:

> False Crawl: A female turtle attempts to lay a clutch of eggs, digging a nest, or part thereof but not actually depositing her eggs.
>
> False Crawl U-Turn: When a female turtle crawls on the beach and makes no digging attempt and then returns to the sea without laying.[8]

The Monthly Beach Report data of turtle activity compiled by DNR supports that "false crawls" occur on all beaches in the state.[9] In fact, the Mid-Season Summary of turtle activity data reported on July 13, 2016 included documentation of 131 false crawls occurring on a single day at Cape Romain, where there is no WDS or any other hard erosion control device.[10] Cape Romain is a National Wildlife Refuge and is "home to the largest nesting population of turtles within the northern subpopulation of the southeastern loggerhead sea turtle."[11] Thus, no man-made obstacles such as lighting, armoring, or placement of any structures are present on the beach at Cape Romain. This suggests that false crawls happen on all beaches and are not directly correlated to the presence of artificial structures on any beach. The Mid-Season Summary notes that 69 nests were recorded on Cape Romain the same day as the 131 false crawls, which is the most nests observed during a one day survey *on record* with the DNR.[12]

There is nothing included in SCELP's letter confirming that the photographs showed actual "false crawl *attempts*," meaning an actual attempt by the sea turtle to

---

[7] SCELP letter, p. 3, emphasis added.
[8] Copied from webpages at http://seaturtle.org/glossary/index.shtml?term=False+Crawl+Attempt and http://seaturtle.org/glossary/index.shtml?term=False+Crawl+U-turn.
[9] Table can be viewed at http://seaturtle.org/nestdb/?view=2; table visible on July 18, 2016 attached as Ex. D.
[10] See, Ex. E.
[11] See information about Loggerhead Sea Turtles provided at www.fws.gov/refuge/Cape_Romain/wildlife_and_habitat/Loggerhead_Sea_Turtles.html.
[12] See Ex. E (mid-season summary email).

create a nest and to lay eggs. SCELP's letter does not identify the location where the photographs were taken. Nor does the letter establish any direct causation between the presence of the WDS and any failure by any sea turtle to lay eggs. While the photographs may show tracks from crawls, SCELP's letter did not identify any failed nests in the photographs. In other words, SCELP's merely claims that proof *will be shown* that turtle nesting activities are interrupted by the WDS and that the devices *have already caused* multiple individuals to abort nesting attempts but fails to include any actual evidence of currently occurring material harm.

While the Budget Proviso authorizes the Department to order removal of all or any portion of a WDS, it specifies a requirement for such order to be based on a determination of material harm to flora, fauna, physical or aesthetic resources of the area. The Department's letter ordering removal of the WDS from Beachwood East is not supported by a finding of material harm to the sea turtles directly caused by the WDS, citing no evidence other than SCELP's letter as the basis for its decision to require removal of the WDS on Requestor's property. In fact, the Monthly Beach Report on DNR's Sea Turtle Nest Monitoring System's website confirms 17 nests in May, 50 in June, and 23 in July so far this year at Harbor Island.[13] Similar data was reported by *The Post and Courier* newspaper on July 15, 2016, specifically citing an example of a nest along the north end of Isle of Palms and noting that "Loggerheads are keeping up what appears more and more to be a remarkable recovery." And, prior to issuing the order for removal and in direct response to SCELP's letter, the Department asked DNR to comment specifically as to whether false crawls documented to the Department by MTCP at the WDS sites located on Harbor Island and Isle of Palms demonstrated material harm to sea turtle species.[14] On June 27, 2016 DNR sent a response to the Department's request. That letter states that DNR specifically considered the six reported false crawls that DHEC asked about and concluded that "the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documents by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity."[15]

DNR's letter includes no information upon which the Department could conclude that WDS installations have negatively impacted to sea turtle nesting activities. The remainder of the letter addresses only speculation as to the potential

[13] See Ex. D (monthly beach report table).
[14] See letter attached as Ex. F (June 22 2016 letter).
[15] See letter attached as Ex. G, p. 1 (emphasis added) (June 27 2016 letter).

for harm, but with no examples or evidence to indicate that the potential actually exists.[16]

As such, there is simply no merit for the Department to have ordered removal of the WDS. The Department's letter fails to establish any material harm caused by the WDS to any sea turtles as the basis for the order. Moreover, the letter provides no explanation as to why a proposal to remove certain horizontal panels of the WDS made to the Department after attorneys from SCELP met with the WDS research team was not given any further consideration. Interestingly, Requestor understands that the Department had previously concluded and informed the WDS research team that the study sites were not even conducive to turtle nesting. Requestor completely agrees with this conclusion since there is not enough beach seaward of the WDS to facilitate nesting behavior and nothing landward of the WDS besides sandbags and building foundations, which is obviously an unsuitable environment. Data being collected by DNR does not support that sea turtle nesting has been negatively impacted by the WDS this season, which at this point is more than halfway complete.

Importantly, the WDS research team recently requested permission from SCDHEC for the installations to remain in place – given the ongoing existence of emergency situations resulting from beach erosion - up until the final review and decision by this Board whether the WDS are "qualified systems" eligible for longer-term use for erosion control. On June 2, 2016, the Department confirmed to the research team's counsel that the WDS could remain in place.[17] The Department's letter of July 8, 2016, requiring removal is in direct contradiction to the representation in the email message of June 2, 2016.

CONCLUSION

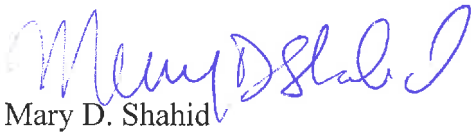
According to the Budget Proviso under which the WDS were installed, the Department was required to determine material harm to some flora, fauna or the area resources before ordering removal of any part of the WDS. Here the Department very prudently involved DNR in the pilot study specifically to protect sea turtles that are known to use the beaches where WDS are installed for nesting. In response to a direct request by the Department to consider the issue, DNR did not confirm the occurrence of any material harm to any sea turtle or nesting behavior caused by the WDS.

Thus, Requestor respectfully requests that this Board reverse the Department's order for removal of all WDS in their entirety from the shoreline. Requestor asks that the Department's prior decision to allow the WDS to remain in place pending this

[16] See Ex. G, p. 2.
[17] See email attached as Ex. H. (from Rheta to Matt)

Board's final review of the data and conclusions of the WDS study and this Board's conclusions regarding continued use of the WDS. I look forward to notification of the Board's action to this request.

Very truly yours,



Mary D. Shahid

MDS/amc
Enclosures

M-CHAM1:176752.1

EXHIBIT
A

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

July 8, 2016

Mr. Michael Ricci
2 John Brown Rd.
Katonah, NY 10536

RE: End of Wave Dissipation System Study Period and Removal Notification

Dear Mr. Ricci,

As you are likely aware, the year-long pilot study of the Wave Dissipation System (WDS) authorized by Budget Proviso (Proviso) 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) will end on July 28, 2016. The Department of Health and Environmental Control (Department) is requiring that all WDS installations be removed by the Citadel research team from the four locations at Harbor Island and the Isle of Palms, South Carolina by the end of the study period.

1 The Department was notified recently of concerns regarding interactions occurring between sea turtle species and the WDS (Attachment 1). The Department has consulted with the S.C. Department of Natural Resources regarding potential impact from continued nesting attempts by these turtle species (Attachment 2). We will continue to gather additional information to further assess these concerns. Because of these concerns, the removal of the device by the end of the study period is necessary.

2 The purpose of this letter is to notify you that the Department is requiring the Citadel research team to remove the WDS structure at Harbor Island on or before July 28, 2016. The horizontal panels, vertical pilings, piling casings, and any other items associated with the WDS will be removed from the beach.

3 As your property may continue to be in an emergency situation as defined by SC Code § 48-39-10(U), you may request an Emergency Order (EO) to install or maintain sandbags, perform minor beach renourishment, or perform sand scraping. We suggest you make any such request in writing prior to the end of the study period which is July 28, 2016 to allow any necessary action to occur in conjunction with the removal of the WDS. Please be aware that the process for sandbags has recently changed and additional information is provided in the attached letter (Attachment 3). We will work closely with you and the Citadel research team to coordinate the removal of the WDS and completion of any measures approved under an EO so that these efforts are undertaken to minimize additional impact to your property.

If you have any questions regarding this matter or need additional assistance in obtaining an emergency order, please feel free to contact me or Blair Williams, Wetland Permitting and Certification Manager at (843) 953-0232 or williabn@dhec.sc.gov.

Sincerely,

M. Rheta G. DiNovo

Rheta G. DiNovo, Director
Regulatory Division
(843) 953-0256 or dinovorg@dhec.sc.gov

cc: Elizabeth Von Kolnitz, SCDHEC OCRM
Blair Williams, SCDHEC OCRM

2014- 2015

effectively implemented in South Carolina the program/curricula for which funding is being applied. Applicants contracted to provide SC Title V, Section 510 funding will be given priority in order to meet the State's Title V, Section 510 federal match requirement. Proposed programs/curricula must be certified as medically accurate by a government of private agency that has the capacity to provide a quality review of materials for medical accuracy. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide proof of an agreement with a federally certified IRB for review of program and evaluation processes and protocol and must provide proof of the IRB's approval prior to program implementation. Applicants must provide a budget for the proposed project and a recent third party audit indicating the applicant has sufficient experience and capacity for properly managing the level of funding for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.51. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) can be deployed within seventy-two hours or less and can be removed within seventy-two hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.52. DELETED

EXHIBIT 8

scstatehouse.gov/query.php?search=DOC&searchtext=beachfront&category=BUDGET&year=2015&version_id=7&return_page=&n

2015- 2016

the State that meet all of the A-H Title V, Section 510 definitions of Abstinence Education. Contracts must be awarded utilizing a competitive approach in accordance with the South Carolina Procurement Code. Proposed programs/curricula must be certified by the National Abstinence Education Association (NAEA) as meeting and being in compliance with all of the Title V, Section 510 A-H requirement for abstinence-until-marriage education programs. Applicants must provide a budget for the proposed project for which the application is being made. Monies will be paid over a twelve month basis for services rendered. Unexpended funds shall be carried forward for the purpose of fulfilling the department's contractual agreement. The programs implemented by the entity awarded a contract pursuant to this proviso may not violate any portion of the South Carolina Comprehensive Health Education Act when implemented in a school setting. An entity that violates any portion of the South Carolina Comprehensive Health Education Act must reimburse the State for all funds disbursed.

34.48. (DHEC: Wave Dissipation Device) From funds appropriated to the department for the Coastal Resource Improvement program, the department shall permit a Wave Dissipation Device pilot program to be initiated.

The 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 is not construction and meets the permitting exception contained in Section 48-39-130(D)(2). Prior to deploying or expanding a qualified wave dissipation device, a person proposing to deploy or expand the device must pay the department a fee of ten cents per linear foot of the proposed deployment or expansion. The department may order the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code.

A 'qualified wave dissipation device' is a device that:

(1) is placed mostly parallel to the shoreline;

(2) is designed to dissipate wave energy;

(3) is designed to minimize scouring seaward of and adjacent to the device by permitting sand to move landward and seaward through the device;

(4) the horizontal panels designed to dissipate wave energy can be deployed within one-hundred twenty hours or less and can be removed within one-hundred twenty hours or less;

(5) does not negatively impact or inhibit sea turtle nesting or other fauna;

(6) can be adjusted after initial deployment in response to fluctuations in beach elevations; and

(7) otherwise prevents down-coast erosion, protects property, and limits negative impacts to public safety and welfare, beach access, and the health of the beach dune system.

34.49. (DHEC: Birthing Center Inspections) For this fiscal year, birthing centers accredited by the Commission

EXHIBIT

C

Attachr

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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Amelia A. Thompson
Staff Attorney
Jessie A. White
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June 15, 2016

Penny Pritzker, Secretary of Commerce
U.S. Department of Commerce,
Herbert C. Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Sally Jewel, Secretary of the Interior
U.S. Department of the Interior,
1849 C Street NW
Washington, DC 20240

Catherine E. Heigel, Director
South Carolina DHEC,
2600 Bull Street
Columbia, SC 29201

Re: 60 Day Notice of Intent to Sue Under the Endangered Species Act

Dear Secretary Pritzker, Secretary Jewel and Director Heigel,

On behalf of the South Carolina Wildlife Federation and the Sierra Club, and in accordance with the 60 day notice requirement of the Endangered Species Act, 16 U.S.C. §1540(g), you are hereby notified that Catherine Heigel, in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("DHEC"), Elizabeth von Kolnitz, in her official capacity as Chief of DHEC's Office of Ocean and Coastal Resource Management ("OCRM"), and DHEC are violating the taking prohibition of the Endangered Species Act, 16 U.S.C. §1538(a)(1)(b).

Since 1988, South Carolina has prohibited the construction of sea walls under the state Coastal Zone Management Act ("the Act"). However, in June 2014, the South Carolina General Assembly amended the Act to include a provision allowing DHEC's OCRM to authorize experimental wave dissipation devices. S.C. Code Ann. §48-39-320(c) ("Notwithstanding any other provision of law contained in this chapter, the board, or the Office of Ocean and Coastal Resource Management, may allow the use in a pilot project of any technology, methodology, or structure, whether or not referenced in this chapter, if it is reasonably anticipated that the use will be successful in addressing an erosional issue in a beach or dune area.") Thus, the Act authorizes any experimental erosion control technology at the discretion of DHEC, and specifically the composite wave dissipation devices which have been constructed on the Isle of Palms in Charleston County, SC, and Harbor Island in Beaufort County, SC. Id., Exhibit A (Isle of Palms Photos), & Exhibit B (Harbor Island Photos).

There is no public notice regarding authorization for these devices, but information related to DHEC- OCRM's authorization of the devices is the subject of a pending FOIA request.

The wave dissipation devices at issue are hard plastic structures designed to reduce erosion caused by wave energy as an alternative to seawalls. See http://www.shorelinestabilization.com/index.html (last visited June 8, 2016) [inventors description of the Wave Dissipation System]. The structure consists of vertical plastic pylons drilled into the sand at regular intervals. Id. Hollow composite plastic tubes are then stacked horizontally between the pylons forming a wall. See id. The system is designed to allow water to seep through the small gaps between the horizontal tubes. Id. These gaps are small, allowing little more than water and sediment to get through the structure. Id. Although the horizontal tubes are removable, they are all currently in place in both Charleston and Beaufort Counties. See Exhibits A & B.

The primary species at issue is the Loggerhead sea turtle (Caretta caretta). The South Atlantic Ocean population of Loggerheads is listed as threatened under the Endangered Species Act. This species of sea turtle is known to nest on South Carolina beaches in every region of the state. See http://explorer.natureserve.org/servlet/NatureServe?searchName=Caretta+caretta (last visited May 24, 2016). When nesting, Loggerheads are subject to a

variety of man made threats including increased beach armoring. Id. Beach armoring results in the inability of breeding females to reach their nesting sites above the high tide line. Id. The U.S. Fish and Wildlife Service lists protection of nesting beaches as one of the top methods for protecting sea turtles. Id.

Although Loggerheads primarily nest on South Carolina beaches, there are three other species of marine turtle that also nest here; Hawksbill sea turtles, Kemp's Ridley sea turtles, and Leatherback sea turtles. Furthermore, Green sea turtles are also found in South Carolina waters. While the Loggerhead is broken into multiple populations, some endangered and some threatened, the rest of the species found in South Carolina are all listed as endangered across their entire range.

50 C.F.R. §17.11 lists all of the turtle species found in South Carolina waters as endangered or threatened. Sea turtles are subject to a number of threats both on and offshore. Takes of sea turtles can occur offshore in boating collisions as well as accidental catches by fishermen. Onshore threats include increased lighting along the beach, armoring of the shoreline, and increased predation by both domestic and wild animals that occur near developed areas. Because turtles use dry sand beaches to nest, human activity along the shoreline can have a significant impact on the species' ability to reproduce.

DHEC's allowance of experimental erosion control devices on South Carolina beaches have resulted and will continue to result in the take of Loggerhead sea turtles, Leatherback sea turtles, and other endangered sea turtle species present in the area by preventing nesting activities. Area residents have observed sea turtle tracks, indicating the turtles have come up to these devices and been unable to nest, as indicated in the attached photos. See Exhibit B.

The erosion control devices authorized by DHEC, specifically the wave dissipation devices currently in place along the shore of Harbor Island and Isle of Palms South Carolina, are the direct cause of harm to several turtle species listed as endangered. If bringing suit is necessary under the Endangered Species Act, the plaintiffs will prove that turtle nesting activities are interrupted by these erosion control devices. Plaintiffs will show that these devices have already caused multiple individuals to abort nesting attempts,

and that these interferences will only worsen as nesting season continues. Finally the plaintiffs will show that any structure that impedes movement of sea turtles seaward of their nesting habitat is a taking of an endangered species and prohibited by federal law.

If these violations are not remedied, the plaintiffs will bring an action seeking both an injunction against authorizing further authorization of wave dissipation devices, a declaratory ruling that the devices now in place, and any further placement of such devices where sea turtle nests occur, violate the Endangered Species Act, and an Order requiring removal of said structures. A complaint will be filed no fewer than 60 days after your receipt of this letter unless the wave dissipation structures are removed. If you have any questions or wish to discuss the matter further, please contact me at 843-527-0078 or amelia@scelp.org.

Very truly yours,

Amelia A. Thompson

Amy E. Armstrong

cc: Elizabeth von Kolnitz, OCRM

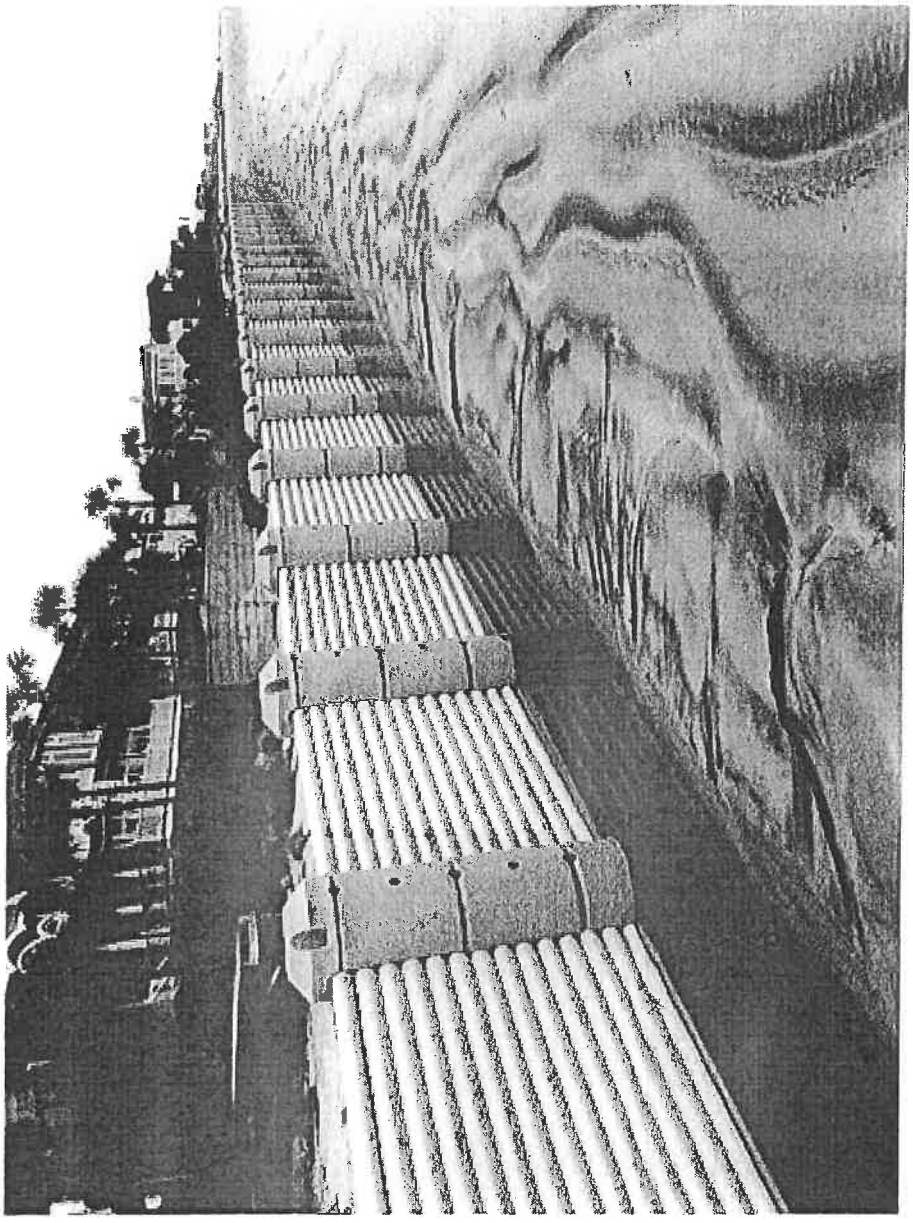


Exhibit A

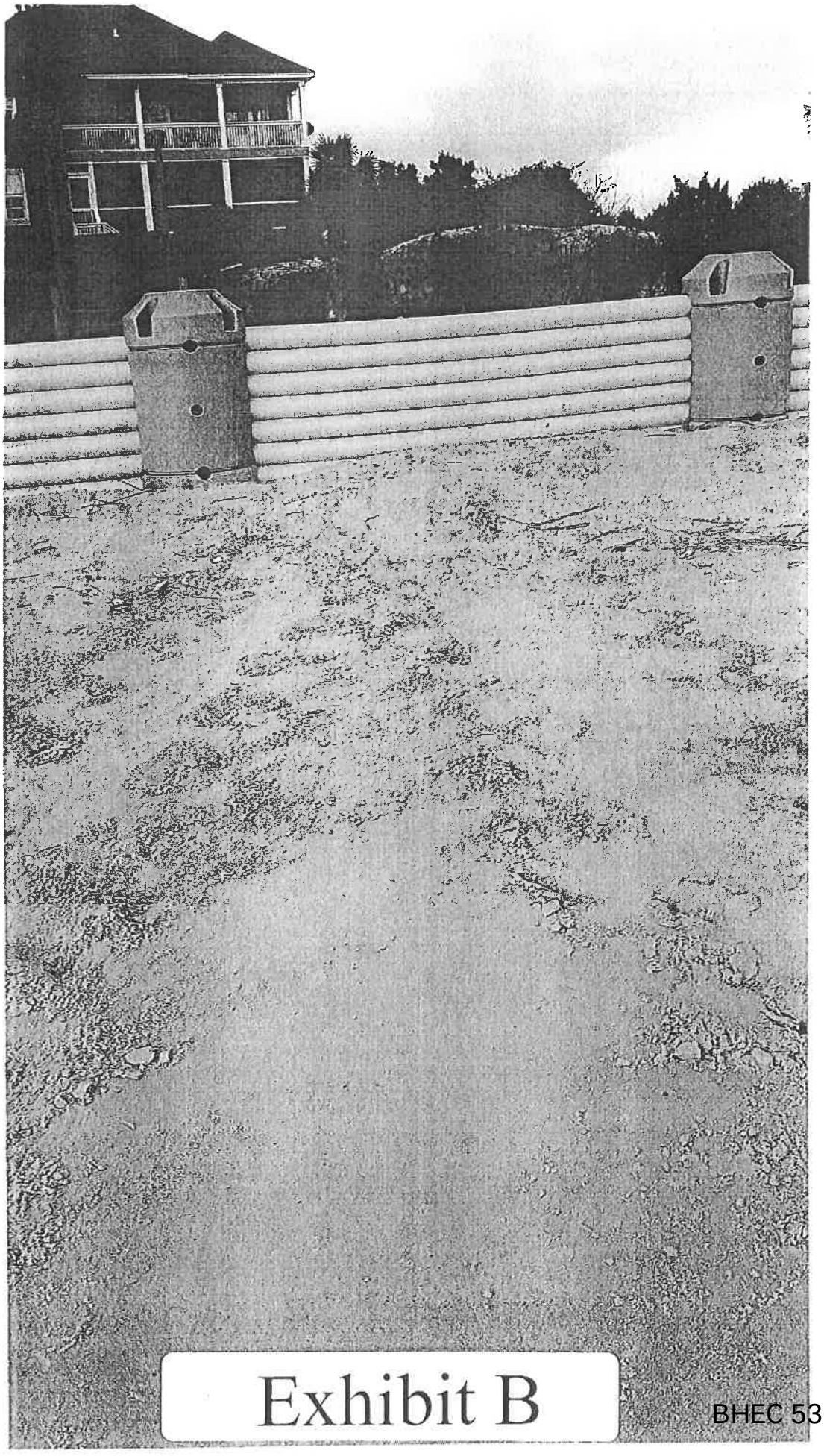
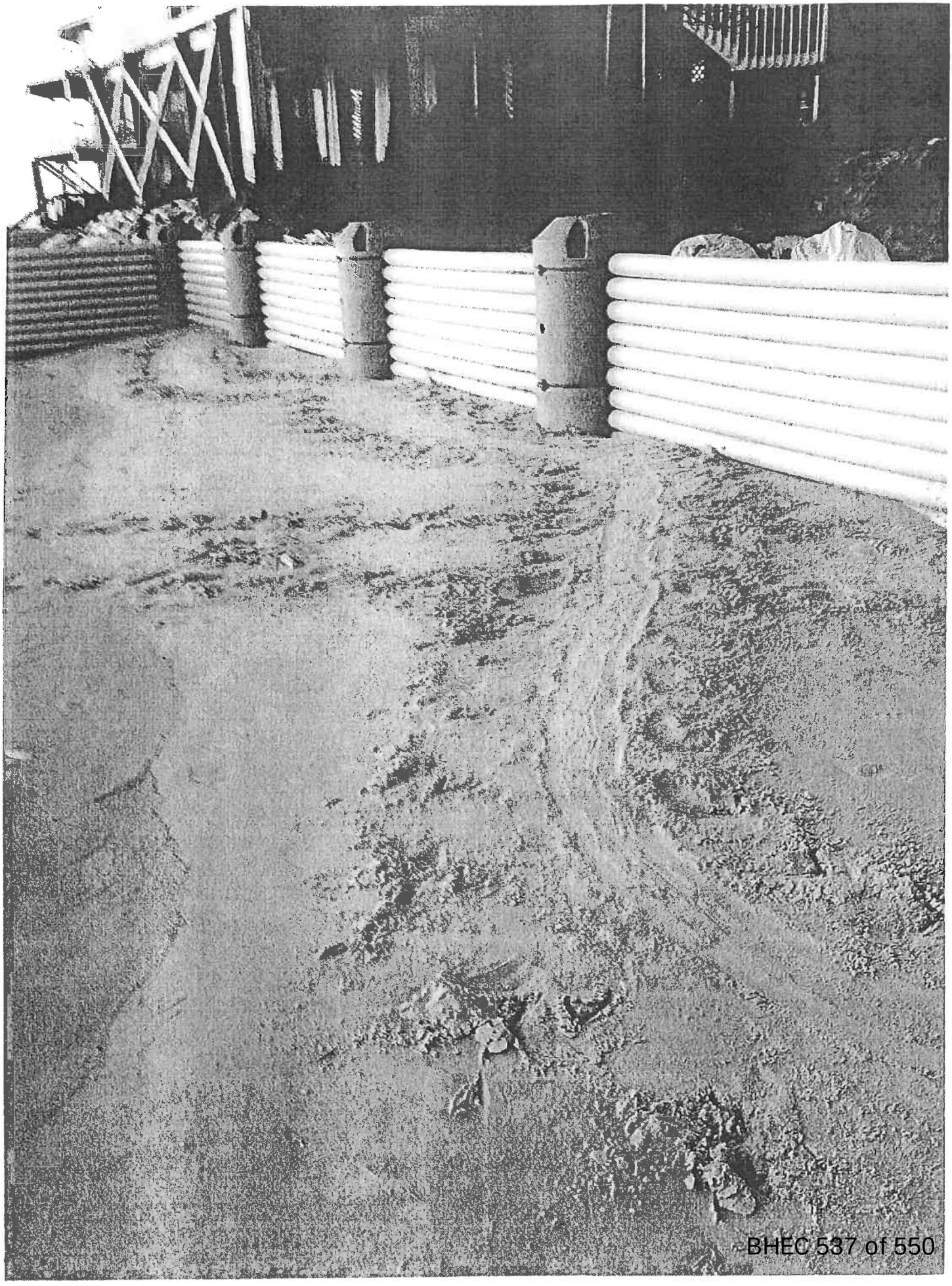


Exhibit B



seaturtle.org/nestdb/?view=2

EXHIBIT
D

Monthly Beach Report

Beach	???		May		Jun		Jul		Overall				
	N	FC	N	FC	N	FC	N	FC	N	FC	HS%	ES%	R%
Bay Point Island	1	0	15	2	51	25	31	6	98	33	0	0	0
Botany Bay Island	0	0	23	10	110	84	60	40	193	114	92.9	21.2	22.7
Botany Bay Plantation	1	0	57	80	161	203	61	92	280	375	83.9	80.8	26.7
Briarcliff Acres	0	0	0	1	3	0	3	1	6	2	n/a	n/a	50
Bulls Island	0	0	33	28	72	77	35	0	139	105	0	0	60.4
Cape Island	0	0	180	229	735	1045	459	0	1374	1274	0	0	27.7
Capers Island	0	0	0	2	6	4	2	0	8	6	n/a	n/a	0
Cedar Island	0	0	7	3	41	21	7	1	55	25	0	0	0
Coffin Point	0	0	2	1	10	15	3	2	15	18	n/a	n/a	0
Daufuskie Island	0	0	14	11	45	24	24	0	83	35	n/a	n/a	9.6
Debidue Beach	0	0	1	2	17	21	8	11	26	34	n/a	n/a	23
Dewees Island	0	0	4	1	13	12	2	5	19	18	n/a	n/a	36.3
Edingsville Beach	0	0	9	20	34	111	10	63	53	202	n/a	n/a	0
Edisto Beach State Park	0	0	42	26	136	85	40	25	218	136	54	49.3	11
Edisto Town Beach	0	0	34	10	87	44	26	19	147	73	76.4	70.9	72.1
Folly Beach	0	0	16	6	37	36	19	14	72	56	n/a	n/a	41.6
Fripp Island	0	0	14	18	59	81	30	46	103	145	n/a	n/a	80.5
Garden City Beach	0	0	1	2	6	4	0	0	7	6	n/a	n/a	14.2
Harbor Island	1	0	17	18	50	65	26	24	94	107	n/a	n/a	31.9
Hilton Head Island	0	0	77	54	190	121	103	79	370	254	87.9	85.8	56.4
Hobcaw Beach	0	0	5	4	13	26	9	10	27	40	69.4	66.9	74
Hunting Island State Park	0	0	29	41	77	103	23	45	129	194	13.2	13.2	31.7
Huntington Beach State Park	0	0	3	3	8	10	4	6	15	19	n/a	n/a	6.6
Interlude Beach	0	0	8	8	11	20	7	7	26	35	n/a	n/a	0
Isle of Palms	0	0	7	5	9	7	7	7	23	19	n/a	n/a	86.9
Kiawah Island	0	0	45	38	146	176	77	88	268	302	0	0	29.4
Lands End	0	0	1	2	5	1	0	0	6	3	n/a	n/a	0
Lighthouse Island	1	0	98	136	360	644	172	0	631	780	0	0	26.7
Little Capers Island	0	0	17	4	26	35	12	19	55	58	0	0	0
Long Bay Estates	0	0	1	0	1	0	0	0	2	0	n/a	n/a	0
Morris Island	0	0	0	0	0	0	4	9	4	9	n/a	n/a	0
Murphy Island	0	0	3	1	12	8	1	1	16	10	0	0	0
Myrtle Beach	0	0	2	1	6	5	5	2	13	8	n/a	n/a	100
Myrtle Beach State Park	0	0	1	0	1	2	0	0	2	2	n/a	n/a	50
North Island	0	0	26	26	97	101	56	88	179	215	0	0	0.5
North Litchfield	0	0	1	0	4	1	0	0	5	1	n/a	n/a	50
North Myrtle Beach	0	0	0	2	4	3	2	5	6	10	n/a	n/a	66.6
Otter Island	0	0	10	5	31	26	15	13	56	44	0	0	0
Pawleys Island	1	0	3	0	9	8	7	3	20	11	n/a	n/a	30
Pine Island	0	0	2	1	4	9	3	0	9	10	0	0	0
Pritchards Island	0	0	17	11	44	42	14	42	75	95	18.2	18.7	1.3
Raccoon Key	0	0	0	0	0	0	22	6	22	6	0	0	0
Sand Island	0	0	22	42	87	149	45	89	154	280	0	0	15.5
Seabrook Island	1	0	12	7	29	44	11	18	53	69	42.2	40.1	81.1
South Island	0	0	22	53	111	147	63	132	196	332	0	0	24.4
South Litchfield	0	0	0	0	4	3	4	13	8	16	n/a	n/a	25
Sullivan's Island	0	0	0	2	6	11	6	3	12	16	n/a	n/a	75
Surfside Beach	0	0	0	0	2	0	2	1	4	1	n/a	n/a	100
Waties Island	0	0	3	6	12	5	7	3	22	14	n/a	n/a	18.1
Total	6	0	884	930	2982	3645	1527	1038	5408	5621	7.8	7	25.8

Species Beach Report

EXHIBIT
E

From: SeaTurtles

Sent: Monday, July 11, 2016 7:11 PM

To: SeaTurtles

Subject: mid-season summary

Greetings,

Hope everyone is doing well. I wanted to provide you all with a mid-season summary of turtle activities. As of today, we have 4,867 nests documented on our beaches in South Carolina. Though we have not surpassed our all-time statewide record year of 5,198 nests in 2013, these are impressive nest counts and we very well could surpass our 2013 record before the season is over.

Cape Romain recently had a banner day with a total of 69 nests and 131 false crawls documented on the refuge. This is the most nests observed during a one day survey on record. Hilton Head was second runner up with a 13 nest day followed by Kiawah Island with a 12 nester. Many projects are reporting breaking their previous annual total nest count records. Congratulations to all!

Hatching season has officially begun with our first nest hatch reported on Edisto Beach State Park Saturday July 9th followed by Cape Island. The Edisto nest incubated approximately 63 days which is average but don't be surprised for shorter incubation periods given the high temperatures we have experienced. Remember to remind everyone *Lights Out!* for sea turtles.

Many of you are also dealing with construction projects on the beaches or the effects of those completed earlier this year. Remember to document in your nest records (and annual report!) of false crawl incidences associated with construction work or disorientations with artificial lighting. All of this information is important for us in managing for the species and showing the effects human activity has on nesting and hatching.

Strandings are up this year with 140 animals reported as of today just slightly over our previous 20-year average of 138. We've had some odd strandings with both leatherbacks and loggerheads that appear to have been associated with the King Tides this year as these animals have been found wandering in the marshes.

You all are doing a tremendous job with conservation efforts and stranding response during this busy season. Your efforts greatly contribute to the recovery of these endangered and threatened species and we are extremely thankful for your work. Nest protection permit holders please look for your office liaison to be setting up site visits.

We are here to support you all so please don't hesitate to contact us if you have any questions, comments or concerns.

Best,

-Michelle

EXHIBIT
F

D H E C
PROMOTE PROTECT PROSPER

Catherine E. Heigel, Director
Promoting and protecting the health of the public and the environment

June 22, 2016

Colonel Alvin Taylor
Director
South Carolina Department of Natural Resources
P. O. Box 167
Columbia, SC 29202-0167

Dear Colonel Taylor:

The S.C. Department of Health and Environmental Control received a letter on Monday, June 20, 2016 from the S.C. Environmental Law Project (Attachment 1). The letter addresses concerns regarding the interactions of sea turtle species with experimental technology that has been placed at sites along the beachfront shoreline of Harbor Island and Isle of Palms, South Carolina.

The device referenced in the letter is known as a wave dissipation device and is a research study under an independently designed and academically sponsored pilot program by The Citadel. The study was authorized by Budget Proviso 34.51 of the 2014-2015 General Appropriations Act (amended in 2015-2016 as Budget Proviso 34.48) (Attachment 2).

As part of this study, DHEC has issued four (4) acknowledgement letters for the installation of the devices on an experimental basis (Attachment 3). The Department imposed monitoring requirements as part of these four (4) acknowledgement letters. One of these requirements obligates the research team to coordinate with the S.C. Department of Natural Resources (DNR) - Marine Turtle Conservation Program (MTCP) throughout the project.

As you are likely aware, MTCP staff have provided information to DHEC over the study period that demonstrates "non-nesting events (false crawls)" for various dates and sites (Attachment 4). The crawls documented to DHEC by the MTCP include the following:

- June 12, 2015: Harbor Island
- June 29, 2015: Harbor Island
- July 21, 2015: Ocean Club Villas, Isle of Palms
- June 15, 2016: Harbor Island
- June 16, 2016: Harbor Island
- June 22, 2016: Ocean Club Villas, Isle of Palms

Although the project device is not subject to DHEC permitting, the Proviso provides for "the removal of all or any portion of a qualified wave dissipation device that the department determines causes material harm to the flora, fauna, physical or aesthetic resources of the area under Section 48-39-130(D)(2) of the 1976 Code."

As DNR is the State agency responsible for ensuring the protection of the State's wildlife, marine resources, and natural resources, I am seeking your agency's guidance as to whether these interactions between sea turtle species and the wave dissipation device demonstrate material harm to these species.

Given the urgency of the matter, I respectfully request an expedited response by Monday, June 27, 2016. My team would be happy to coordinate with you or your staff to meet onsite this week if that would be beneficial in your evaluation. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine E. Heigel

Catherine E. Heigel

Attachments

cc: Penny Pritzker, U.S. Dept. of Commerce
Sally Jewel, U.S. Dept of the Interior
Amy E. Armstrong, S.C. Environmental Law Project
Elizabeth B. von Kolnitz, S.C. DHEC - OCRM

EXHIBIT
G

South Carolina Department of
Natural Resources

1000 Assembly Street Suite 336
PO Box 167
Columbia, SC 29202
803.734.3766 Office
803.734.9809 Fax
perryb@dnr.sc.gov

Alvin A. Taylor
Director
Robert D. Perry
Director, Office of
Environmental Programs

June 27, 2016

Ms. Catherine E. Heigel, Director
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

REFERENCE: Wave Dissipation System Experimental Project

Dear Director Heigel,

Department of Natural Resources (DNR) Director Alvin Taylor has instructed me to reply to your request of June 22, 2016 for guidance as to whether the interactions between sea turtle species and the use of wave dissipation devices (WDS) demonstrate material harm to these species. Per your request, I am providing the following information regarding our agency's involvement and position on the use of a WDS along the South Carolina coastline.

DNR has been involved in the environmental review of WDS since March of 2014 when the concept was first proposed for experimental and research purposes. Since the initial review, DNR has provided detailed comments on proposals to extend the study period and to evaluate the system using modified designs at different locations under varying conditions (see attached correspondence). DNR consistently has expressed concern regarding the widespread use of this system, especially as it relates to potential impacts to nesting sea turtles. Our Department's position on the use of the WDS along our coastline has not changed, and we continue to recommend that the use of this system be restricted to temporary and experimental uses in highly erosional areas where sea turtle nesting typically does not occur.

We have considered the six reported false crawls during 2015 and so far this year at the WDS sites. DNR is not particularly surprised that some have occurred, and our position is that the impact of these false crawls is comparable to those that would normally occur in highly erosional areas with a shoreline characterized by a steep erosional scarp. In either of these situations, the six false crawls documented by the Marine Turtle Conservation Program – and those occurring against a steep erosional scarp, there is not necessarily evidence of material harm to the turtle attempting to nest nor to subsequent potential nesting activity. That noted, there is potential harm associated with continued nesting attempts. Where a WDS may be lengthy, it could cause a female to come in and out of the water several times potentially each time interacting with another portion of the WDS. Sea turtles have a strong drive to deposit eggs, and they have been

known to nest at the base of erosional scarps if after multiple nesting attempts they have not located appropriate habitat. Such a situation may result in material harm to the species.

Erosional scarps, unlike hard structures, may eventually level out with natural processes thereby creating potential sea turtle nesting habitat were it may not have existed before. WDS, which were proposed to be temporary and experimental, may limit long-term shoreline stability. Also, DNR continues to be concerned over modifications to WDS since reconfigurations may make it difficult to quantitatively assess the "experiment." We look forward to receiving and reviewing an evaluation of the effectiveness of WDS.

If you or your staff have any additional questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

Bob Perry
Director, Office of Environmental Programs

ec: Penny Pritzker, U. S. Department of Commerce
Sally Jewel, U. S. Department of Interior
Amy E. Armstrong, S. C. Environmental Law Project
Elizabeth B. von Kolnitz, DHEC-OCRM
Alvin A. Taylor
Robert H. Boyles, Jr.

EXHIBIT
H

Colwell, Angelica M.

From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Monday, July 11, 2016 11:36 AM
To: Shahid, Mary D.
Subject: Fwd: WDS

Mary,

See below, FYI.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

---------- Forwarded message ----------
From: **DiNovo, Rheta** <dinovorg@dhec.sc.gov>
Date: Thu, Jun 2, 2016 at 4:54 PM
Subject: Re: WDS
To: Matt Hamrick <mhamrick@kernodlelaw.com>, "Winslow, E. Matt" <winsloem@dhec.sc.gov>, "Williams, Blair N." <WILLIABN@dhec.sc.gov>
Cc: Timothy Mays <timothymays@bellsouth.net>, "deronnettles@gmail.com" <deronnettles@gmail.com>

Matt,

As we have discussed previously, and in detail at our October 30, 2015 meeting, the current WDS installations will be allowed to remain in place at the conclusion of the current studies provided the properties are still in an emergency situation up to the time of the final Board review and decision.

If the Board makes the determination that the WDS is a "qualified system," the property owners will need to request Emergency Orders from the Department to allow the WDS installations to remain in place and to assure they meet all requirements of the regulations. If the Board makes the determination that the WDS is not a "qualified system," the WDS installations will not be allowed to remain in place and must be removed at that time.

Hope that helps.

Rheta

Rheta Geddings DiNovo
Office of Ocean & Coastal Resource Management
SC Dept. of Health & Environmental Control
1362 McMillan Avenue
North Charleston, SC 29405

wk ph (843) 953-0256
wk cell (843) 709-9126
wk fax (843) 953-0260
dinovorg@dhec.sc.gov

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From: Matt Hamrick <mhamrick@kernodlelaw.com>
Sent: Wednesday, June 1, 2016 2:24:07 PM
To: DiNovo, Rheta; Winslow, E. Matt; Williams, Blair N.
Cc: Timothy Mays; deronnettles@gmail.com
Subject: Re: WDS

Dear Rheta, Blair and Matt,

I hope you are all doing well. This is to follow up on my email below. We would like confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

We would also like to know if, after the current studies conclude, the current WDS installations will be allowed to remain in place until the next renourishment and/or scraping projects, to avoid the alternative of sandbagging in the interim?

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Attorney at Law
Certified Circuit Court Mediator
Kernodle Coleman
914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone: (843) 795-7800
Fax: (843) 795-3032
mhamrick@kernodlelaw.com

On Tue, May 24, 2016 at 2:34 PM, Matt Hamrick <mhamrick@kernodlelaw.com> wrote:
Dear Rheta,

I hope you are doing well. This is to request confirmation that OCRM will allow the current WDS installations to remain in place after the conclusion of the studies, while we await the results of the analysis and DHEC/OCRM's decision whether to allow the WDS for use under the regular emergency permitting process.

If you have any questions, or if you would like to discuss this by telephone or an in-person meeting, please let me know.

Thank you.

Matt

Matthew D. Hamrick
Kernodle & Coleman
914 Folly Rd., Suite 2
Charleston, SC 29412
(843) 795-7800

Sent from my iPhone

Charleston County, South Carolina

generated on 7/18/2016 1:55:30 PM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data Refreshed on	Assessment Year	Pay Year
6041000090		15 BEACHWOOD EAST, ISLE OF PALMS	7/2/2016	2015	2015

Current Parcel Information

Owner	SKINNER RUTH ANN MARITAL TRUST SKINNER RUTH ANN RESIDUARY TRUST	Property Class Code	101 - RESID-SFR
		Acreage	.0000
Owner Address	675 TUXEDO PLACE ATLANTA GA 30328		
Legal Description	Subdivision Name -BEACHWOOD Description -LOT 31 TRACT A BLK X PlatSuffix AO-39 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	$1,650,000	$550,000	$2,200,000	$25,637.40	$25,637.40
2014	$1,899,999	$350,000	$2,249,999	$25,380.00	$25,380.00
2013	$1,899,999	$350,000	$2,249,999	$25,447.50	$25,447.50
2012	$1,899,999	$350,000	$2,249,999	$25,497.00	$25,497.00

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
SKINNER RUTH ANN	0222 009	9/7/2008	A		$0
SKINNER RUTH ANN	0222 007	9/7/2008	A		$0
WILSON JAMES WALES	T222 886	1/19/1993	G		$400,000

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1994	2.0	06	3,668	
R01	MISC	Miscellaneous	1994	0	0		312
R01	MISC	Miscellaneous	1994	0	0		144

Board:
Allen Amsler, *Chairman*
Mark S. Lutz, *Vice Chairman*
Ann B. Kirol, DDS, *Secretary*
R. Kenyon Wells
Charles M. Joye II, P.E.
L. Clarence Batts, Jr.
David W. Gillespie, MD
William Lee Hewitt, III

August 24, 2016

Via Certified Mail (unless otherwise noted)

9214 8969 0099 9790 1405 7714 48 Matthew D. Hamrick, Esq. Kernodle Coleman Attorneys at Law Post Office Box 13897 Charleston, SC 29422	9214 8969 0099 9790 1405 7715 16 Butch Bowers, Esq. Bowers Law Office, LLC Post Office Box 50549 Columbia, SC 29250
9214 8969 0099 9790 1405 7715 23 Newman Jackson Smith, Esq. Nelson Mullins Riley & Scarborough, LLP Post Office Box 1806 Charleston, SC 29402	9214 8969 0099 9790 1405 7715 78 Daniel S. Slotchiver, Esq. Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
9214 8969 0099 9790 1405 7716 08 Mary D. Shahid, Esq. Nexsen P ruet, LLC Post Office Box 486 Charleston, SC 29402	*Via Electronic Mail Delivery* Bradley D. Churdar, Esquire SCDHEC – Office of General Counsel 1362 McMillan Avenue, Suite 400 Charleston, SC 29405

RE: Docket No. 16-RFR-60, Removal of Wave Dissipation System

The South Carolina Board of Health and Environmental Control will conduct a Final Review Conference during the Board meeting on Thursday, September 8, 2016, at 10:00 a.m. in the Board Room (3420), of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, on the above referenced matter.

The S.C. Board of Health and Environmental Control will set presentation times and notify all Counsel of Record of such.

If any party would like to have a transcript of the review conference, please notify, via e-mail, the Clerk of Board by Friday, September 2, 2016, so that arrangements can be made to have a reporter present for the conference. The parties requesting

a court reporter will be responsible for payment of the court reporter.

Sincerely,

Lisa Lucas Longshore
Clerk