Healthy People. Healthy Communities.

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

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

South Carolina Board of Health and Environmental Control

Agenda

May 9, 2019

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 March 7, 2019 meeting
2. Administrative and Consent Orders issued by Health Regulation
3. Administrative and Consent Orders issued by Environmental Affairs
4. Placement of Synthetic Cannabinoids -- 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I of SC Controlled Substance Act
5. Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, General Assembly Review is not required
6. Notice of Proposed Regulation Amending R.61-79, Hazardous Waste Management Regulations
7. Notice of Proposed Regulation Amending R.61-79, Hazardous Waste Management Regulations, General Assembly Review is not required
8. Notice of Proposed Regulation Repealing R.61-23, Control of Anthrax
9. Agency Affairs

Executive Session (if needed)

Adjournment

Note: The next scheduled meeting is June 13.

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

May 9, 2019

( ) ACTION/DECISION

(X) INFORMATION

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

II. **SUBJECT:** Health Regulation Administrative Orders and Consent Orders for the period of February 1, 2019, through March 31, 2019.

III. **FACTS:** For the period of February 1, 2019, through March 31, 2019, Health Regulation reports 6 Consent Orders totaling $6,200 in assessed monetary penalties.

Health Regulation Bureau	Facility, Service, Provider, or Equipment Type	Administrative Orders	Consent Orders	Emergency Suspension Orders	Assessed Penalties
EMS & Trauma	Ambulance Services Provider	0	1	0	500
	Paramedic	0	1	0	300
	Advanced Emergency Medical Technician	0	1	0	300
Radiological Health	Dental X-Ray Facility	0	1	0	1,700
	Chiropractic X-Ray Facility	0	2	0	3,400
TOTAL		**0**	**6**	**0**	**$6,200**

Approved By:

Shelly Bezanson Kelly
Director of Health Regulation

Bureau of Emergency Medical Services and Trauma

Provider Type	Total # of Licensed Providers
Ambulance Services Provider	276

1. Pendleton Area Rescue Squad – Ambulance Services Provider

Inspections and Investigations: On October 10, 2018, the Department initiated an investigation of Pendleton Area Rescue Squad (PARS) concerning two employees who worked as ambulance operators or drivers. The Department found that the two individuals performed ambulance operator or driver duties on over 200 calls during October and November 2018 while working for PARS, but PARS did not have any records of these drivers.

Violations: The EMS regulation requires EMS providers to maintain their drivers' records. In addition, ambulance drivers are required to be at least 18 years old, physically able to drive, possess a valid driver's license from South Carolina or the home state of the provider, have a criminal background check, and display a picture ID in a manner visible to the public at all times while on duty. Ambulance drivers are further required to complete a nationally accredited safety driving course specific to emergency vehicles within the first six months of hire. The Department found PARS violated the EMS regulation by failing to maintain any of its drivers' records.

Enforcement Action: By Consent Order, PARS agreed to a $500 monetary penalty and has made full payment of the penalty.

Prior Actions: None.

Provider Type	Total # of Certified Providers
Paramedic	3,858

2. Heather Marie Hurt – Paramedic

Inspections and Investigations: On December 6, 2018, the Department received information concerning Ms. Hurt's conduct while working for Union County EMS and initiated an investigation. The Department found that in November 2018, Ms. Hurt and her emergency medical technician (EMT) partner were dispatched via radio and the Computer Automated Dispatching ("CAD") System to respond to a call from a patient with cold/flu symptoms at a private residence. The EMS crew acknowledged the call and went en route to respond. While en route to the call, the EMS crew went to a convenience store so that Ms. Hurt

could buy sunglasses. This created a delay in response time to the patient. Ms. Hurt's partner reported the incident to Union County EMS management.

Violations: The Department determined that Ms. Hurt committed misconduct as defined by the state EMS law and regulation because her actions or inactions created a substantial possibility that death or serious physical harm could result from intentionally driving the ambulance to the convenience store to buy sunglasses. By not driving directly to the call, Ms. Hurt created a delay in patient treatment.

Enforcement Action: By Consent Order, Ms. Hurt agreed to pay $150 of an assessed monetary penalty of $300. Ms. Hurt has paid the $150 and the remaining $150 is being held in abeyance for 12 months. Ms. Hurt also agreed to a six-month suspension of her paramedic certification to be held in abeyance for 12 months. Lastly, Ms. Hurt agreed to successfully complete a National Association of Emergency Medical Technicians Principles of Ethics and Personal Leadership ("PEPL") course within 12 months. Ms. Hurt has already successfully completed the PEPL course.

Prior Actions: None.

Provider Type	Total # of Certified Providers
Advanced EMT	440

3. Jonathan Wells – Advanced EMT

Inspections and Investigations: On November 28, 2018, the Department received information concerning the conduct of Mr. Wells while working for Greenwood County EMS. The Department initiated an investigation and found that in September 2018, Mr. Wells and his paramedic partner were dispatched to a call for a nursing home patient complaining of breathing problems. The EMS crew was dispatched by in-person supervisor, via radio, and the Computer Automated Dispatching ("CAD") System, and acknowledged the call. However, the EMS crew drove to the ambulance station after they went en route to the call and gave the ambulance to another crew to respond to the call. The ambulance with the oncoming crew arrived on scene in what amounted to a 40-minute delay.

Violations: The Department determined Mr. Wells committed misconduct as defined by the state EMS law and regulation because his actions or inactions created a substantial possibility that death or serious physical harm could result from intentionally driving to the ambulance station to switch out crews. By not driving directly to the call, Mr. Wells and his partner created a 40-minute delay in patient treatment.

Enforcement Action: By Consent Order, Mr. Wells agreed to pay $75 of an assessed monetary penalty of $300. Mr. Wells has paid the $75 and the remaining $225 is being held in abeyance for 12 months. Mr. Wells also agreed to a six-month suspension of his advanced EMT certification to be held in abeyance for 12 months. Lastly, Mr. Wells agreed to successfully complete a National Association of Emergency Medical Technicians Principles of Ethics and Personal Leadership ("PEPL") course within 12 months.

Prior Actions: None.

Bureau of Radiological Health

Radiological Health Facility Type	Total # of Registered Facilities
Dental X-Ray	1,725

4. North Rivers Dental Associates, Inc. – Dental X-Ray Facility

Inspections and Investigations: The Department conducted several routine inspections, including October 2007, May 2013, and most recently on January 30, 2018, and found that North Rivers repeatedly violated the same regulatory requirement.

Violations: The Department determined that North Rivers violated the X-Rays regulation by failing to show records of equipment performance testing for four of the seven units located at North Rivers during the most recent inspection and had been cited for the same violation on two previous inspections. Specifically, North Rivers failed to show that their dental intraoral units had been tested every two years.

Enforcement Action: By Consent Order, North Rivers agreed to pay $425 of an assessed monetary penalty of $1,700. North Rivers has paid the $425 and the remaining $1,275 is being held in abeyance for 36 months.

Prior Actions: None.

Radiological Health Facility Type	Total # of Registered Facilities
Chiropractic X-Ray	475

5. Ridgeland Chiropractic Center – Chiropractic X-Ray Facility

Inspections and Investigations: The Department conducted several routine inspections, including April 2011, January 2015, and most recently on January 23, 2018, and found that Ridgeland repeatedly violated the same regulatory requirement.

Violations: The Department determined that Ridgeland violated the X-Rays regulation by failing to show records of annual equipment performance testing. Specifically, Ridgeland failed to show that their medical x-ray equipment had been tested annually.

Enforcement Action: By Consent Order, Ridgeland agreed to pay $425 of an assessed monetary penalty of $1,700. Ridgeland has paid the $425 and the remaining $1,275 is being held in abeyance for 24 months.

Prior Actions: None.

6. Capital City Chiropractic, LLC – Chiropractic X-Ray Facility

Inspections and Investigations: The Department conducted several routine inspections, including September 2012, September 2015, and most recently on February 13, 2018, and found that Capital City repeatedly violated the same regulatory requirement.

Violations: The Department determined that Capital City violated the X-Rays regulation by failing to show records of annual equipment performance testing. Specifically, Capital City failed to show that their medical x-ray equipment had been tested annually.

Enforcement Action: By Consent Order, Capital City agreed to pay $425 of an assessed monetary penalty of $1,700. Capital City has paid the $425 and the remaining $1,275 is being held in abeyance for 24 months.

Prior Actions: None.

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
May 9, 2019

_____ ACTION/DECISION

__X__ INFORMATION

1. **TITLE:** Administrative and Consent Orders issued by the Office of Environmental Affairs.

2. **SUBJECT:** Administrative and Consent Orders issued by the Office of Environmental Affairs during the period February 1, 2019 through March 31, 2019.

3. **FACTS:** For the period of February 1, 2019 through March 31, 2019, the Office of Environmental Affairs issued one hundred fifty-two (152) Consent Orders with total assessed civil penalties in the amount of two hundred forty-seven thousand, five hundred ninety seven dollars $247,597.00. One (1) Consent Agreement was issued during the reporting period. Thirteen (13) Administrative Orders were issued during the reporting period with total assessed civil penalties in the amount of sixty-eight thousand, five hundred ten dollars $68,510.00.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Agreements	Consent Orders	Assessed Penalties
Land and Waste Management					
UST Program	6	$55,510.00	0	4	$2,470.00
Aboveground Tanks	0	0	0	0	0
Solid Waste	0	0	0	4	$1,500.00
Hazardous Waste	0	0	0	4	$44,200.00
Infectious Waste	0	0	0	0	0
Mining	0	0	0	0	0
SUBTOTAL	**6**	**$55,510.00**	**0**	**12**	**$48,170.00**
Water					
Recreational Water	4	$10,000.00	0	14	$24,560.00
Drinking Water	0	0	0	4	0
Water Pollution	0	0	0	12	$30,717.00
Dam Safety	0	0	1	1	0
SUBTOTAL	**4**	**$10,000.00**	**1**	**31**	**$55,277.00**
Air Quality					
SUBTOTAL	**0**	**0**	**0**	**8**	**$41,500.00**
Environmental Health Services					
Food Safety	2	$3,000.00	0	100	$101,650.00
Onsite Wastewater	1	0	0	1	$1,000.00
SUBTOTAL	**3**	**$3,000.00**	**0**	**101**	**$102,650.00**
OCRM					
SUBTOTAL	**0**	**0**	**0**	**0**	**0**
TOTAL	**13**	**$68,510.00**	**1**	**152**	**$247,597.00**

Submitted by:

Myra C. Reece
Director of Environmental Affairs

ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
May 9, 2019

BUREAU OF LAND AND WASTE MANAGEMENT

Underground Storage Tank Enforcement

1) Order Type and Number: Administrative Order 18-0154-UST
Order Date: February 12, 2019
Individual/Entity: **Jerry Patterson**
Facility: Comers Full Service & Grill, Inc.
Location: 5425 Wylie Avenue
Hickory Grove, SC 29717
Mailing Address: Same
County: York
Previous Orders: None
Permit/ID Number: 12851
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-60(A) (2002 and Supp. 2016); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann. Regs. 61-92.280.31(a), 280.70(a), 280.70(c), 280.93(a), and 280.110(c) (2017).

Summary: Jerry Patterson (Individual/Entity), owns underground storage tanks located in Hickory Grove, South Carolina. On April 24, 2018, the Department issued a Notice of Alleged Violation because there were no current corrosion protection system test results available, no financial assurance on file with the Department, and tank registration fees for fiscal year 2018 had not been paid. On August 1, 2018, the Department issued a Notice of Alleged Violation because tank registration fees for fiscal year 2019 had not been paid. The Individual/Entity has violated the SUPERB Act and Underground Storage Tank Control Regulation 61-92, as follows: failed to pay annual underground storage tank registration fees, failed to permanently close USTs that have been temporarily out of service for greater than twelve (12) months and do not meet current corrosion protection standards, failed to demonstrate financial responsibility for an UST system, and failed to submit evidence of financial assurance to the Department upon request.

Action: The Individual/Entity is required to: submit a completed Tank/Sludge Disposal form; permanently close the USTs and submit an UST Closure and Assessment Report, submit a completed Certificate of Financial Responsibility form and provide evidence of financial assurance if contamination is found, pay annual underground storage tank registration fees in the amount of one thousand, nine hundred eighty dollars ($1,980.00), and pay a civil penalty in the amount of twenty thousand, six hundred seventy-five dollars **($20,675.00)**.

2) Order Type and Number: Administrative Order 18-0183-UST
Order Date: February 12, 2019
Individual/Entity: **Dhruvin II LLC**
Facility: Fleetwood One Stop
Location: 435 Main Street North
Allendale, SC 2929810-3717
Mailing Address: 613 Patrick Drive
Hampton, SC 29924
County: Allendale
Previous Orders: None
Permit/ID Number: 00327
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. 2016); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann. Regs. 61-92.280.65 (2017).

Summary: Dhruvin II LLC (Individual/Entity), owns underground storage tanks located in Allendale, South Carolina. On April 16, 2018, the Department issued a Notice of Alleged Violation because a Site-Specific Work Plan (SSWP) for an Initial Groundwater Assessment (IGWA) had not been submitted to the Department. The Individual/Entity has violated the SUPERB Act and Underground Storage Tank Control Regulation, as follows: failed to determine the full extent of a release in accordance with a schedule established by the Department.

Action: The Individual/Entity is required to: submit a SSWP for an IGWA and within sixty (60) days of the Department's approval of the SSWP, submit an IGWA Report; and, pay a civil penalty in the amount of six thousand, seven hundred sixty dollars **($6,760.00)**.

3) Order Type and Number: Administrative Order 19-0010-UST
Order Date: February 12, 2019
Individual/Entity: **Mat A. Hardy**
Facility: Former McCormick Tire & Battery
Location: 117 E. Gold Street
McCormick, SC 29835
Mailing Address: P.O. Box 45
Plum Branch, SC 29845-0045
County: McCormick
Previous Orders: None
Permit/ID Number: 10958
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-60(A) (2002 and Supp. 2016).

Summary: Mat A. Hardy (Individual/Entity), owned underground storage tanks located in McCormick, South Carolina. On November 6, 2018, the Department issued a Notice of Alleged Violation/Notice of Enforcement Conference for failure to pay annual tank registration fees. The Individual/Entity has violated the SUPERB Act as follows: failed to pay annual underground storage tank registration fees.

Action: The Individual/Entity is required to: pay annual underground storage tank registration fees in the amount of two thousand, three hundred seventy-five dollars ($2,375.00), and pay a civil penalty in the amount of three thousand dollars **($3,000.00)**.

4) Order Type and Number: Administrative Order 18-0133-UST
Order Date: March 14, 2019
Individual/Entity: **Eastover Express, Inc.**
Facility: Satgur Mart
Location: 625 Spears Creek Road
Elgin, SC 29045
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 19335
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. 2016) and South Carolina Underground Storage Tank Control Regulations, 7 S.C. Code Ann. Regs. 61-92.280.30(a), 280.31(a), 280.34(c), 280.40(a), 280.40(a)(2), 280.43(d), and 280.50 (2017).

Summary: Eastover Express, Inc. (Individual/Entity) owns and operates underground storage tanks (USTs) located in Elgin, South Carolina. On April 12, 2018, the Department conducted a routine inspection and issued a Notice of Alleged Violation because the automatic tank gauge (ATG) cap for the premium tank was broken and would not lock; metal components in the diesel tank submersible turbine pump (STP) sump were in contact with water; ATG records for the premium tank were not available upon request; the line leak detector vent line in the premium tank STP was broken; and non-passing release detection results for the premium tank were not investigated or reported to the Department. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Control Regulation as follows: failed to ensure that releases due to spilling or overfilling did not occur; failed to maintain and continuously operate a corrosion protection system; failed to provide records to the Department upon request; failed to provide adequate release detection for an UST system; failed to conduct proper release detection using an ATG; and failed to report a suspected release to the Department.

Action: The Individual/Entity is required to: submit proof that the line leak detector vent line has been repaired or replaced for the premium tank; submit proof that the water in the STP sump for the diesel tank has been removed and the metal components have been isolated; submit proof the ATG cap for the premium tank has been replaced; submit proof that the cause of the ATG non-passing result for the premium tank has been investigated and necessary repairs have been made; submit tank tightness test results for the premium tank; and, pay a civil penalty in the amount of ten thousand, nine hundred twenty-five dollars **($10,925.00).**

5) Order Type and Number: Administrative Order 18-0128-UST
Order Date: March 25, 2019
Individual/Entity: **267 N Anderson LLC**
Facility: 267 N Anderson
Location: 267 N Anderson Road
Rock Hill, SC 29732
Mailing Address: P. O. Box 3278

Rock Hill, SC 29732
County: York
Previous Orders: None
Permit/ID Number: 09275
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. 2016) and South Carolina Underground Storage Tank Control Regulations, 7 S.C. Code Ann. Regs. 61-92.280.93(a), and 280.110(c).

Summary: 267 N Anderson LLC (Individual/Entity) owns and operates underground storage tanks (USTs) located in Rock Hill, South Carolina. On December 1, 2017, the Department issued a Notice of Alleged Violation because the financial responsibility had expired and annual tank registration fees and associated late fees for fiscal years 2017, 2018, and 2019 had not been paid. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Control Regulations as follows: failed to submit a completed Certificate of Financial Responsibility and provide evidence of financial assurance; and failed to pay annual tank registration fees and associated late fees for fiscal years 2017, 2018, and 2019.

Action: The Individual/Entity is required to: submit a completed Certificate of Financial Responsibility and evidence of financial assurance; pay annual tank registration fees and associated late fees for fiscal years 2017, 2018, 2019 in the amount of five thousand, four hundred forty-five dollars ($5,445.00); and, pay a civil penalty in the amount of five thousand, six hundred fifty dollars **($5,650.00).**

6) Order Type and Number: Administrative Order 18-0301-UST
Order Date: March 25, 2019
Individual/Entity: **Amity Corp**
Facility: Sunshine Food Store
Location: 901 Miles Road
Summerville, SC 29485
Mailing Address: 214 Evesham Drive
Summerville, SC 29485
County: Dorchester
Previous Orders: None
Permit/ID Number: 03032
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. 2016) and South Carolina Underground Storage Tank Control Regulations, 7 S.C. Code Ann. Regs. 61-92.280.34(c), 280.93(a), 280.110(c), 280.242(b)(3), 280.242(b)(4), 280.43(c), and 280.245 (2017).

Summary: Amity Corp (Individual/Entity) owns and operates underground storage tanks (USTs) located in Summerville, South Carolina. On August 1, 2018, the Department issued a Notice of Alleged Violation because the financial responsibility requirements had expired. On January 2, 2019, the Department conducted a routine inspection and issued an additional NOAV because monthly Class A/B operator logs were not available upon request; a Class C operator was not trained, and a list of Class C operators was not available upon request; and, current monthly rectifier readings results were not available upon request. The Individual/Entity has violated the State Underground Petroleum Environmental Response Bank Act of 1988 and the South Carolina Underground Storage Tank Control Regulations as follows: failed to submit a completed Certificate

of Financial Responsibility and provide evidence of financial assurance; failed to validate that monthly requirements had been performed and to physically visit the facility once a quarter; failed to train and maintain a list of Class C operators; and failed to inspect the impressed current system every sixty (60) days.

Action: The Individual/Entity is required to: submit a completed Certificate of Financial Responsibility and evidence of financial assurance; a current rectifier reading log; submit A/B operator logs or proof that record keeping has begun; submit a C operator list; and, pay a civil penalty in the amount of eight thousand, five hundred dollars **($8,500.00).**

7) Order Type and Number: Consent Order 19-0005-UST
Order Date: February 6, 2019
Individual/Entity: **Shiv Sai of Charleston, Inc.**
Facility: Shiv Sai of Charleston Inc.
Location: 2703 Highway 17A South
Summerville, SC
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit/ID Number: 17983
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. 2016); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann. Regs. 61-92.280.41(b)(1)(i)(A) (2017).

Summary: Shiv Sai of Charleston, Inc. (Individual/Entity) owns and operates underground storage tanks located in Summerville, South Carolina. On December 12, 2018, the Department conducted a routine inspection and issued a Notice of Alleged Violation because there was no line leak detector on the premium tank. On December 27, 2018, the Department received a line leak detector function check for the newly installed line leak detector on the premium tank. The Individual/Entity has violated the SUPERB Act and Underground Storage Tank Control Regulation 61-92, as follows: failed to equip pressurized piping with an automatic line leak detector.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand dollars **($1,000.00)**.

8) Order Type and Number: Consent Order 18-0272-UST
Order Date: February 12, 2019
Individual/Entity: **Hafida Osborn**
Facility: Johnsons Old Rail Road Express
Location: 4580 Highway 501 West
Conway, SC 29526
Mailing Address: 4070 Halyard Way
Myrtle Beach, SC 29579
County: Horry
Previous Orders: None
Permit/ID Number: 19028

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. 2016), 44-2.60(A),

Summary: Hafida Osborn (Individual/Entity), owns and operates underground storage tanks located in Conway, South Carolina. On August 1, 2018, the Department issued a Notice of Alleged Violation because tank registration fees for fiscal year 2019 had not been paid. The Individual/Entity has violated the SUPERB Act as follows: failed to pay annual tank registration fees.

Action: The Individual/Entity is required to: pay annual tank registration fees and associated late fees in the amount of six hundred five dollars ($605.00) and pay a civil penalty in the amount of one hundred twenty dollars **($120.00)**.

9) Order Type and Number: Consent Order 18-0287-UST
Order Date: March 18, 2019
Individual/Entity: **Robert Glenn Sparks**
Facility: Morris Service Station
Location: 1502 Lockhart Highway
Union, SC 29379
Mailing Address: 130 Hightower Lake Road
Union, SC 29379
County: Union
Previous Orders: None
Permit/ID Number: 15373
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988, S.C. Code Ann. § 44-2-10 et seq. (2002 and Supp. 2016) (SUPERB Act); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.70(a) (2017)

Summary: Robert Glenn Jones (Individual/Entity) owns and operates underground storage tanks (USTs) in Union, South Carolina. On July 27, 2018, the Department issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation as follows: failed to maintain corrosion protection for a temporarily closed UST.

Action: The Individual/Entity is required to: submit acceptable corrosion protection system test results for all piping associated with the UST's located at the Facility; and pay a civil penalty in the amount of three hundred fifty dollars **($350.00)**.

10) Order Type and Number: Consent Order 19-0024-UST
Order Date: March 18, 2019
Individual/Entity: **Petrogas Group South Carolina, LLC**
Facility: Pitt Stop 43
Location: 5221 Highway 321
Gaston, SC 29053
Mailing Address: 279 Cedarcrest Drive
Lexington, SC 29053
County: Lexington
Previous Orders: None

Permit/ID Number: 19342
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. 2016); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann. Regs. 61-92.280.20(c)(1)(ii) (2017).

Summary: Petrogas Group South Carolina, LLC (Individual/Entity) owns and operates underground storage tanks located in Lexington, South Carolina. On January 29, 2019, the Department conducted a routine inspection and issued a Notice of Alleged Violation because there was a stick in the drop tube shutoff valve on the regular unleaded tank. On January 30, 2019, the Department received proof that the stick had been removed from the drop tube shutoff valve on the regular unleaded tank. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Control Regulation, as follows: failed to maintain overfill prevention equipment on an underground storage tank system.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand dollars **($1,000.00)**.

Solid Waste Enforcement

11) Order Type and Number: Consent Order 18-24-SW
Order Date: February 25, 2019
Individual/Entity: **Robert M. Byrd and Barbara W. Byrd**
Facility: Private Lot
Location: L. E. Byrd Road
Patrick, SC
Mailing Address: 4895 Toney Mill Road
Patrick, SC 29584
County: Chesterfield
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: Solid Waste Policy and Management Act of 1991, S.C. Code Ann. 44-96-10 et seq. (2002 & Supp. 2018); Solid Waste Management: Waste Tires, R.61-107.3, Part III.A.1.a. (2015)

Summary: Robert M. Byrd and Barbara W. Byrd (Individuals/Entities), own property located in Patrick, South Carolina. On July 30, 2018, and December 6, 2018, the Department conducted inspections in response to a complaint about waste tires begin stored on the property. The Individuals/Entities have violated the Solid Waste Policy and Management Act and the Solid Waste Management: Waste Tires Regulation as follows: stored greater than one hundred twenty (120) waste tires without first obtaining a permit from the Department to operate a waste tire collection facility.

Action: The Individuals/Entities are required to: dispose of the waste tires at a facility permitted by the Department to accept waste tires; submit disposal receipts to the Department; and pay a **suspended penalty** in the amount of twenty thousand dollars **($20,000.00)** should any requirement of the Order not be met.

12) Order Type and Number: Consent Order 19-01-SW
Order Date: March 13, 2019
Individual/Entity: **Matthew Asher**
Facility: Matthew Asher, Residence
Location: 1124 Water Wheel Street
Greer, SC 29650
Mailing Address: 42 Meadow Springs Lane
Greer, SC 29650
County: Spartanburg
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §§ 44-96-290(A) (Rev. 2002) (Act) and the Solid Waste Management: Solid Waste Landfills and Structural Fill Regulation, R.61-107.19, Part II.B.1 (Rev. 2008 and Supp. 2016) (Regulation)

Summary: Matthew Asher (Individual/Entity), located in Greer, South Carolina, is responsible for operating a structural fill without a permit from the Department. The Department conducted inspections on August 24, 2018 and September 6, 2018 and determined that the Site had been filled without a structural fill permit from the Department. The Individual/Entity has violated the South Carolina Solid Waste Policy and Management Act and Solid Waste Management: Solid Waste Landfills and Structural Fill Regulation as follows: operated a structural fill without a permit issued by the Department.

Action: The Individual/Entity is required to: apply a two-foot thick final earth cover and seed the finished surface area with native grasses or other suitable cover; record with the Register of Deeds a notation in the record of ownership of the property that will, in perpetuity, notify any potential purchaser of the property that the land, or a portion thereof, has been filled with solid waste debris; pay a civil penalty in the amount of five hundred dollars **($500.00)**; and pay a suspended penalty in the amount of three thousand dollars ($3,000.00) should any requirement of the Order not be met.

13) Order Type and Number: Consent Order 19-03-SW
Order Date: March 20, 2019
Individual/Entity: **Dillon County**
Facility: Dillon County Municipal Solid Waste Transfer Station
Location: One (1) mile outside Dillon County City Limits, off SC Highway 57
Dillon County, SC
Mailing Address: P. O. Box 449
Dillon, SC 29536
County: Dillon
Previous Orders: None
Permit/ID Number: 171001-6001
Violations Cited: South Carolina Solid Waste Policy and Management Act of 1991 (Act), Solid Waste Management: Solid Waste Landfills and Structural Fill Regulation (Regulation), R.61-107.19, Part C.2., Part E.10., Part F.2., and Part F.7. and Permit # 171001-6001 (Permit)

Summary: Dillon County (Individual/Entity) is responsible for operating a solid waste transfer station in Dillon, South Carolina. The Department conducted inspections on October 4, 2018, October 24, 2018, November 16, 2018, November 26, 2018, December 5, 2018, January 2, 2019, and January 23, 2019 and observed that the tipping area was not being cleared at the end of each working day and there was litter located outside the tipping area and on the grounds surrounding the Facility. The Individual/Entity has violated the South Carolina Solid Waste Policy and Management Act, the Solid Waste Management: Solid Waste Landfills and Structural Fill Regulation, and the Permit 171001-6001 as follows: any spillage or leakage of solid waste at a transfer station shall be contained and unpermitted discharges to the environment shall be prohibited; tipping areas shall be located within an enclosed building or covered area and all waste shall be contained in the tipping area; the transfer station shall maintain a neat and orderly appearance; all putrescible wastes shall be removed for proper disposal within twenty-four (24) hours of receipt; and no waste shall remain on the floor of the Facility at the end of each working day.

Action: The Individual/Entity is required to: remove and properly dispose of all litter located outside of the Facility to include the grounds surrounding the Facility; and, pay a civil penalty in the amount of one thousand dollars **($1,000.00)**; and pay a suspended penalty in the amount of fifteen thousand dollars ($15,000.00) should any requirement of the Order not be met.

14)

Order Type and Number:	Consent Order 19-07-SW
Order Date:	March 27, 2019
Individual/Entity:	**H. V. Gore**
Facility:	Gore Tire Service
Location:	1400 East Liberty Street Marion, SC 29571
Mailing Address:	Same
County:	Marion
Previous Orders:	None
Permit/ID Number:	N/A
Violations Cited:	Solid Waste Policy and Management Act of 1991, S.C. Code Ann. 44-96-10 et seq. (2002 & Supp. 2018); Solid Waste Management: Waste Tires Regulation, R.61-107.3, Part III.A.1., B.1., and B.3. (2015).

Summary: H. V. Gore (Individual/Entity) owns and operates Gore Tire Service located in Marion, South Carolina. On July 31, 2018, August 22, 2018, October 22, 2018, and December 11, 2018, the Department conducted inspections in response to a complaint. The Individual/Entity has violated the Solid Waste Policy and Management Act and the Solid Waste Management: Waste Tires Regulation as follows: stored greater than one thousand (1,000) waste tires at a time at a retail tire business and failed to store resale tires in racks or stacks two rows wide.

Action: The Individual/Entity is required to: dispose of the waste truck tires and passenger waste tires at a facility permitted by the Department to accept waste tires; provide disposal receipts; store resale tires by size in stacks or racks no more than two rows wide; and, pay a **suspended penalty** in the amount of five thousand dollars **($5,000.00)** should any requirement of the Order not be met.

Hazardous Waste Enforcement

15) Order Type and Number: Consent Order 19-05-HW
Order Date: February 14, 2019
Individual/Entity: **Lanxess Corporation**
Facility: Lanxess Corporation
Location: 103 Harrison Bridge Road
Simpsonville, SC 29681
Mailing Address: 111 RIDC Park West Drive
Pittsburgh, PA 15275
County: Spartanburg
Previous Orders: None
Permit/ID Number: SCD 981 927 873
Violations Cited: The South Carolina Hazardous Waste Management Act**,** S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2016) and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2017).

Summary: Lanxess Corporation (Individual/Entity) is a generator of hazardous waste and is located in Greenville County, South Carolina. The Department conducted an inspection conducted on August 30, 2018. The Individual/Entity has violated the Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to make an accurate waste determination on containers labeled "For Disposition" and numerous containers and drums of unknown materials; the ninety (90) day hazardous waste storage area did not have secondary containment and the floor of Aisle 46 was cracked; the hazardous waste weekly inspection logs did not include the names of the individuals conducting the inspections; and failed to provide documentation to demonstrate that a copy of the contingency plan had been sent to local emergency officials.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of ten thousand dollars **($10,000.00)**.

16) Order Type and Number: Consent Order 19-7-HW
Order Date: February 19, 2019
Individual/Entity: **Safety Kleen Systems, Inc.**
Facility: Safety Kleen Systems, Inc.
Location: 2818 Old Woodruff Road
Spartanburg, SC 29652
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: SCD 981 031 040
Violations Cited: The South Carolina Hazardous Waste Management Act**,** S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2016) and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2017).

Summary: Safety Kleen Systems, Inc. (Individual/Entity) specializes in the proper handling and disposal of both hazardous and non-hazardous waste at its facility located at 2818 Old

Woodruff Road, Greer, South Carolina. The Department conducted an inspection on September 25, 2018. The Individual/Entity has violated the Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to ensure each container is labeled or marked clearly with accumulation start dates; failed to ensure hazardous waste is stored in containers not exceeding eighty-five (85) gallons; failed to ensure containers holding hazardous waste are in good condition; failed to ensure the capacity for container storage did not exceed 6,912 gallons in the West Warehouse; failed to remedy any deterioration or malfunction of equipment which the inspection revealed on a schedule which ensures the problem does not lead to an environmental or human health hazard; failed to record inspections in an inspection log or summary; failed to test and maintain all facility communications or alarm systems to assure proper operation in the time of an emergency; and failed to inspect the hazardous waste tank fixed roof and closure devices yearly.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of thirteen thousand, five hundred dollars **($13,500.00)**.

17) Order Type and Number: Consent Order 19-8-HW
Order Date: March 22, 2019
Individual/Entity: **Fort Dearborn Company**
Facility: Fort Dearborn Company
Location: 100 North Woods Drive
Fountain Inn, SC 29644
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit/ID Number: SCD 982 096 349
Violations Cited: The South Carolina Hazardous Waste Management Act**,** S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2016) and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2017).

Summary: Fort Dearborn Company (Individual/Entity) is a supplier of high impact decorative labels for a variety of product packaging solutions at its facility located at 100 North Woods Drive, in Fountain Inn, South Carolina. The Department conducted an inspection on January 17, 2019. The Individual/Entity has violated the Hazardous Waste Management Regulations as follows: failed to ensure each container is labeled or marked clearly with accumulation start dates, EPA Hazardous Waste Number(s) and the words: "Hazardous Waste - federal laws prohibit improper disposal"; failed to mark containers with the words: "Hazardous Waste" or with other words that identified the contents of the container; failed to have solvent-contaminated wipes, when accumulated and stored, contained in non-leaking, closed containers that are labeled ''Excluded Solvent-Contaminated Wipes;" failed to maintain the required solvent-contaminated wipes documentation at the facility; failed to keep containers holding hazardous waste closed, except when it is necessary to add or remove waste; failed to record hazardous waste inspections in an inspection log or summary; failed to conduct weekly hazardous waste inspections; failed to maintain lamps in a manner to prevent a release and to keep such containers closed; failed to label or mark clearly each container of universal lamps; failed to demonstrate the length of time universal waste had been accumulated from the date it became a waste; and failed to submit a revised copy of the contingency plan to local police departments, fire departments, hospitals, and State and local emergency response teams.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of seven thousand, two hundred dollars **($7,200.00)**.

18) Order Type and Number: Consent Order 19-9-HW
Order Date: March 27, 2019
Individual/Entity: **Quad Packaging**
Facility: Quad Packaging
Location: 1785 Dewberry Road
Spartanburg, SC 29307
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: SCR 000 773 481
Violations Cited: The South Carolina Hazardous Waste Management Act**,** S.C. Code Ann. §§ 44-56-10 et seq. (2018), the South Carolina Hazardous Waste Management Regulation, 6 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2016) and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2017), the South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §§ 44-96-10 et seq. (2002 and Supp. 2016), and the South Carolina Solid Waste Management: Used Oil Regulations, 8 S.C. Code Ann. Regs. 61-107.279 (2016).

Summary: Quad Packaging (Individual/Entity) provides collaborative packaging solutions at its facility located in Spartanburg, South Carolina. The Department conducted an inspection on January 8, 2019. The Individual/Entity has violated the Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to ensure each container is labeled or marked clearly with accumulation start dates, EPA Hazardous Waste Number(s) and the words: "Hazardous Waste - federal laws prohibit improper disposal"; failed to receive an extension from the Department to allow hazardous waste to remain onsite for longer than 180 days; failed to mark containers with the words: "Hazardous Waste" or with other words that identified the contents of the container; failed to have solvent-contaminated wipes, when accumulated and stored, contained in non-leaking, closed containers that are labeled ''Excluded Solvent-Contaminated Wipes;" failed to maintain the required solvent-contaminated wipes documentation at the facility; failed to keep containers holding hazardous waste closed, except when it is necessary to add or remove waste; failed to conduct weekly hazardous waste inspections; accumulating hazardous waste in excess of 55 gallons in satellite accumulation; failed to mark containers holding the excess accumulation of hazardous waste with the date the excess amount began accumulating; failed to accumulate hazardous waste in containers at or near the point of generation where the wastes were initially accumulated under the control of the operator; failed to maintain and operate the facility to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste; failed to post the name and telephone number of the emergency coordinator along with the location of the fire extinguishers and spill control material, and if present, fire alarms next to the telephone; failed to file a revised or new Notification Form with the Department whenever the facility's contact information became inaccurate; failed to submit legible copies of manifests to the Department, with some indication that the Entity had not received confirmation of delivery within 60 days of the waste being accepted by the transporter; failed to declare its generator status annually on or before January 31st; and failed to ensure that containers used to store used oil are kept closed to prevent spillage or contamination from precipitation.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of thirteen thousand, five hundred dollars **($13,500.00)**.

BUREAU OF WATER

Recreational Waters Enforcement

19)	Order Type and Number:	Administrative Order 19-017-RW
	Order Date:	January 15, 2019
	Individual/Entity:	**Randal Columbia, LLC**
	Facility:	Baymont Inn and Suites
	Location:	347 Zimalcrest Drive Columbia, SC 29210
	Mailing Address:	Same
	County:	Richland
	Previous Orders:	None
	Permit/ID Number:	40-276-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Randal Columbia, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On September 4, 2018, September 6, 2018, and September 28, 2018, the pool was inspected, and violations were issued for failure to properly operate and maintain; and on September 6, 2018, and September 28, 2018, violations were issued for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: depth marker tiles were cracked; a ladder was not tight and secure; the pool floor was dirty; there was algae on the pool wall and floor; there was no suction in the skimmer baskets; there was debris in the skimmer baskets; a skimmer was missing a weir; the water level was too high; the drinking water fountain was not operating properly; there was no foot rinse shower; a light in the pool wall was out of its niche; the chlorine and pH levels were not within the acceptable range of water quality standards; the main drain grates were not visible due to cloudy water; the pool rules sign was damaged on the first inspection; the pool rules sign was not completely filled out on the second and third inspections; 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; the bound and numbered log book was not available for review; the disinfection equipment was not operating; the recirculation and filtration system was not operating properly; the automatic controller was not operating; and the pool was re-opened prior to receiving Department approval.

Action: The Individual/Entity is required to: keep the pool closed until an inspection is scheduled with the Department to verify that all of the deficiencies have been corrected; submit a corrective action plan and schedule of implementation to address the deficiencies; and pay a civil penalty in the amount of four thousand dollars **($4,000.00)**.

20)	Order Type and Number:	Administrative Order 19-033-RW
	Order Date:	February 14, 2019
	Individual/Entity:	**Malabar, LTD**
	Facility:	Sea Gypsy Inn
	Location:	304 North Ocean Boulevard Myrtle Beach, SC 29577
	Mailing Address:	Same
	County:	Horry

Previous Orders: None
Permit/ID Number: 26-303-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Malabar, LTD (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 8, 2018, and August 6, 2018, 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; the plaster on the pool floor was delaminated, chipped, and had sharp edges; a skimmer was missing a weir; there was no drinking water fountain; the foot rinse shower was not operating properly; the chlorine level was not within the acceptable range of water quality standards; there was only one main drain and no Vac-Alert testing results; there was no United States Coast Guard approved life ring; the emergency notification device was not accessible; the pool rules sign was not legible; the current pool operator of record information was not legible; the bound and numbered log book was not available for review; and a section of the perimeter fencing had openings greater than four inches. On August 22, 2018, a follow-up inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand dollars **($1,000.00)**. The civil penalty has been paid.

21) Order Type and Number: Administrative Order 19-039-RW
Order Date: March 8, 2019
Individual/Entity: **Stone Ridge Golf, LLC**
Facility: Pebble Creek Country Club
Location: 101 Pebble Creek Drive
Taylors, SC 29687
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit/ID Number: 23-155-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Stone Ridge Golf, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 29, 2018, and August 3, 2018, 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 depth marker tiles did not have the appropriate size letters and numbers; the skimmer lids were cracked; there was no life ring; and there was no pool rules sign 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 one thousand dollars **($1,000.00)**.

22) Order Type and Number: Administrative Order 19-040-RW
Order Date: March 8, 2019
Individual/Entity: **M and M Corporation of South Carolina**
Facility: Baymont Inn
Location: 240 East Exchange Boulevard

	Columbia, SC 29634
Mailing Address:	114 Blythewood Road
	Blythewood, SC 29016
County:	Richland
Previous Orders:	16-088-RW ($340.00);
	18-086-RW ($680.00)
Permit/ID Number:	40-428-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: M and M Corporation of South Carolina (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 4, 2018, and June 28, 2018, 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 drinking water fountain was not operating properly; the fill spout was not stainless steel or an equivalent material; the gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; the current pool operator of record information was not posed 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 four thousand dollars **($4,000.00)**.

23)	Order Type and Number:	Consent Order 19-026-RW
	Order Date:	February 6, 2019
	Individual/Entity:	**BR Greenville, LLC**
	Facility:	The Mills
	Location:	1000 Oak Springs Drive
		Greenville, SC 29615
	Mailing Address:	6100 Fairview Road, Suite 355
		Charlotte, NC 28210
	County:	Greenville
	Previous Orders:	None
	Permit/ID Number:	23-1207B
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: BR Greenville, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 31, 2018, and July 10, 2018, 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 cyanuric acid level was above the water quality standards acceptable limit; only one "Shallow Water – No Diving Allowed" sign was posted; and only one "No Lifeguard On Duty – Swim At Your Own Risk" 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)**. The Individual/Entity submitted a corrective action plan and corrected the deficiencies.

24) Order Type and Number: Consent Order 19-027-RW
Order Date: February 6, 2019
Individual/Entity: **Clairemont Homeowners Association of Lancaster, Inc.**
Facility: Clairemont Swim Club
Location: 8235 Chatsworth Drive
Fort Mill, SC 29715
Mailing Address: P.O. Box 2853
Matthews, NC 28106
County: Lancaster
Previous Orders: None
Permit/ID Number: 29-1004C
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Clairemont Homeowners Association of Lancaster, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a kiddie pool. On July 2, 2018, and August 7, 2018, 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 chlorine and pH levels were 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)**.

25) Order Type and Number: Consent Order 19-028-RW
Order Date: February 7, 2019
Individual/Entity: **Shelly Woods Homeowners' Association, Inc.**
Facility: Shelly Woods
Location: 1015 Shelly Woods Drive
Fort Mill, SC 29715
Mailing Address: P.O. Box 11906
Charlotte, NC 28220
County: Lancaster
Previous Orders: None
Permit/ID Number: 29-1021B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Shelly Woods Homeowners' Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 1, 2018, June 28, 2018, and July 23, 2018, 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 drinking water fountain was not operating; the bound and numbered log book was not maintained on a daily basis; and the gate did not self-close and latch.

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 two thousand, forty dollars **($2,040.00)**. The civil penalty has been paid.

26) Order Type and Number: Consent Order 19-029-RW
Order Date: February 7, 2019
Individual/Entity: **Indigo 110 Apartments SC, LLC**
Facility: Indigo at 110 Apartments
Location: 110 Chanticleer Village Road
Myrtle Beach, SC 29579
Mailing Address: Same
County: Horry
Previous Orders: 18-090-RW ($680.00)
Permit/ID Number: 26-1109B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Indigo 110 Apartments SC, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 26, 2018, and July 19, 2018, 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 floor was dirty; a skimmer was missing a weir; the gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the "No Lifeguard On Duty – Swim At Your Own Risk" sign did not have the correct wording; 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 one thousand, three hundred sixty dollars **($1,360.00)**.

27) Order Type and Number: Consent Order 19-031-RW
Order Date: February 11, 2019
Individual/Entity: **Ackerman Greenstone North Augusta, LLC**
Facility: Crowne Plaza North Augusta
Location: 1060 Center Street
North Augusta, SC 29841
Mailing Address: Same
County: Aiken
Previous Orders: None
Permit/ID Number: 02-1046B
Violations Cited: S.C. Code Ann. Regs. 61-51(B)(2)

Summary: Ackerman Greenstone North Augusta, LLC (Individual/Entity) owns and is responsible for the proper construction, installation, and operation of a pool. On December 13, 2018, the Individual/Entity contacted Department staff and requested an inspection to obtain written approval to operate the pool. At that time, Department staff determined that a permit to construct had not been issued. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: failed to obtain a permit to construct from the Department prior to the construction of the pool.

Action: The Individual/Entity is required to: submit to the Department for review and approval a standard operating procedure to ensure that the requirements for obtaining a permit to construct and final approval to operate are followed; and pay a civil penalty in the amount of two hundred dollars **($200.00)**.

28) Order Type and Number: Consent Order 19-030-RW
Order Date: February 12, 2019
Individual/Entity: **Upper Palmetto Young Men's Christian Association**
Facility: YMCA at Carolina Crossing
Location: 249 South Shiloh Road
York, SC 29745
Mailing Address: 117 Carolina Crossing Drive
York, SC 29745
County: York
Previous Orders: None
Permit/ID Number: 46-110-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Upper Palmetto Young Men's Christian Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On February 26, 2018, June 1, 2018, and July 10, 2018, 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 floor was delaminated and chipped; skimmers were missing weirs; skimmer baskets were floating; the flow meter was not operating; a ladder was missing bumpers; the fill spout was made of PVC; the chlorine level was not within the acceptable range of water quality standards; the log book was not bound and numbered; the log book was not maintained on a daily basis; and the log book was not maintained a minimum of three times per week by a certified pool operator.

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 two thousand, forty dollars **($2,040.00)**. The civil penalty has been paid.

29) Order Type and Number: Consent Order 19-032-RW
Order Date: February 14, 2019
Individual/Entity: **Palm Keys Homeowners Association, Inc.**
Facility: Palm Keys
Location: 804 12th Avenue South
North Myrtle Beach, SC 29582
Mailing Address: 625 Sea Mountain Highway
North Myrtle Beach, SC 29582
County: Horry
Previous Orders: 16-080-RW ($680.00)
Permit/ID Number: 26-1388B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Palm Keys Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 21, 2018, and July 31, 2018, 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 universal "no diving" tile was broken; a ladder was missing bumpers; there were chlorine tablets in the skimmer baskets; a 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 not completely filled out; 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 one thousand, three hundred sixty dollars **($1,360.00)**. The civil penalty has been paid.

30) Order Type and Number: Consent Order 19-034-RW
Order Date: February 19, 2019
Individual/Entity: **Jonathan Harbour Homeowners Association, Inc.**
Facility: Jonathan Harbour
Location: 2611 South Ocean Boulevard
Myrtle Beach, SC 29577
Mailing Address: P.O. Box 7706
County: Myrtle Beach, SC 29572
Previous Orders: None
Permit/ID Number: 26-987-1, 26-988-1, 26-989-1, 26-990-1, & 26-991-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Jonathan Harbour Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of two pools, a kiddie pool, and two spas. On June 6, 2018, and July 12, 2018, the pools, kiddie pool, and spas were inspected, and violations were issued for failure to properly operate and maintain; and on July 13, 2018, the pools, kiddie pool, and spas were inspected, and violations were 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: the spa deck was uneven with sharp edges; skimmers were missing weirs; there was no drinking water fountain; a gate did not self-close and latch; the pH level was not within the acceptable range of water quality standards; the spa rules sign was not completely filled out; the life ring was deteriorated; the emergency notification device was not operational; the bound and numbered log book was not maintained on a daily basis; and the pools, kiddie pool, and spas were 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; and pay a civil penalty in the amount of six thousand, seven hundred twenty dollars **($6,720.00)**.

31) Order Type and Number: Consent Order 19-035-RW
Order Date: February 20, 2019
Individual/Entity: **Tani Hospitality, LLC**
Facility: Sleep Inn Conway
Location: 3345 Church Street
Conway, SC 29526
Mailing Address: 3345 US 501
Conway, SC 29526
County: Horry
Previous Orders: None
Permit/ID Number: 26-R03-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Tani Hospitality, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 19, 2018, and July 25, 2018, 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 depth marker tiles were missing; a ladder was missing bumpers; a skimmer was missing a weir; skimmer lids were missing; the drinking water fountain was not operating; the chlorine level was not within the acceptable range of water quality standards; the life ring did not have a permanently attached rope; the pool rules sign was not completely filled out; the "Shallow Water – No Diving Allowed" signs did not have the appropriate size lettering; a light was out of its niche; 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.

32)	Order Type and Number:	Consent Order 19-036-RW
	Order Date:	February 22, 2019
	Individual/Entity:	**Hyperion Towers Homeowners Association, Inc.**
	Facility:	Hyperion Towers
	Location:	5508 North Ocean Boulevard North Myrtle Beach, SC 29577
	Mailing Address:	P.O. Box 280 North Myrtle Beach, SC 29577
	County:	Horry
	Previous Orders:	18-050-RW ($680.00)
	Permit/ID Number:	26-J69-1
	Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Hyperion Towers Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 30, 2018, and July 6, 2018, 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; there was no drinking water fountain; there was no emergency notification device; the pool rules sign was not completely filled out and was faded; the bound and numbered log book was not maintained on a daily basis; and there were chlorine sticks in the skimmer baskets. On August 15, 2018, an inspection was conducted, and it was determined that all of the deficiencies had been addressed.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of one thousand, three hundred sixty dollars **($1,360.00)**.

33)	Order Type and Number:	Consent Order 19-037-RW
	Order Date:	March 4, 2019
	Individual/Entity:	**South Aiken Fitness, Inc.**
	Facility:	Gold's Gym
	Location:	101 Corporate Parkway Aiken, SC 29803
	Mailing Address:	Same
	County:	Aiken

Previous Orders: 18-038-RW ($2,040.00)
Permit/ID Number: 02-1015D
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: South Aiken Fitness, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a spa. On January 5, 2018, June 12, 2018, July 10, 2018, and October 30, 2018, the spa 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 bolt cover was missing; the chlorine and pH levels were not within the acceptable range of water quality standards; the spa temperature was too high; 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 thousand, three hundred sixty dollars **($3,360.00)**.

34) Order Type and Number: Consent Order 19-038-RW
Order Date: March 8, 2019
Individual/Entity: **Lord Anson Arms Horizontal Property Regime**
Facility: Lord Anson Arms
Location: 259 East Bay Street
Charleston, SC 29401
Mailing Address: 259 East Bay Street, Suite 6A
Charleston, SC 29401
County: Charleston
Previous Orders: AO 14-101-DW ($1,000.00),
AO 17-111-RW ($1,000.00)
Permit/ID Number: 10-122-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Lord Anson Arms Horizontal Property Regime (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 29, 2018, and June 27, 2018, 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 lifeline with floats was not attached to the pool wall; the pH level was not within the acceptable range of water quality standards; the pool rules sign was not completely filled out; the bound and numbered log book was not available for review on the first inspection; the bound and numbered log book was not maintained on a daily basis on the second inspection; and there were chlorine sticks in the skimmer baskets.

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 two thousand, seven hundred twenty dollars **($2,720.00)**. The civil penalty has been paid.

35) Order Type and Number: Consent Order 19-041-RW
Order Date: March 14, 2019
Individual/Entity: **Seaward Villas Association, Inc.**
Facility: Seaward Villas
Location: 2605 North Ocean Boulevard

	North Myrtle Beach, SC 29582
Mailing Address:	514 Lausanne Drive
	Greensboro, NC 27410
County:	Horry
Previous Orders:	None
Permit/ID Number:	26-336-1
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: Seaward Villas Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On June 11, 2018, and July 16, 2018, 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 lifeline with floats was not attached to the pool wall; a skimmer was missing a weir; there was no drinking water fountain; a gate did not self-close and latch; the pH level was not within the acceptable range of water quality standards; the pool rules sign was not completely filled out; only one "Shallow Water – No Diving Allowed" sign was posted; 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 six hundred eighty dollars **($680.00)**.

36)

Order Type and Number:	Consent Order 19-042-RW
Order Date:	March 21, 2019
Individual/Entity:	**99 West Edge Developer, LLC**
Facility:	99 West Edge
Location:	7 Horizon Street
	Charleston, SC 29403
Mailing Address:	75 5th Street NW, Suite 180
	Atlanta, GA 30308
County:	Charleston
Previous Orders:	None
Permit/ID Number:	10-1315B
Violations Cited:	S.C. Code Ann. Regs. 61-51(J)

Summary: 99 West Edge Developer, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool. On May 29, 2018, and June 29, 2018, 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 chlorine and pH levels were 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 six hundred eighty dollars **($680.00)**.

Drinking Water Enforcement

37) Order Type and Number: Consent Order 19-004-DW
Order Date: February 7, 2019
Individual/Entity: **Shady Acres Water Co.**
Facility: Shady Acres
Location: 178 Hunter Drive
Chapin, SC 29036
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit/ID Number: 3250060
Violations Cited: S.C. Code Ann. Regs. 61-58.17.K(1)

Summary: Shady Acres Water Co. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On January 15, 2019, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS tested present for total coliform and E. coli, which resulted in a violation of the maximum contaminant level (MCL) for E. coli.

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.

38) Order Type and Number: Consent Order 19-005-DW
Order Date: February 7, 2019
Individual/Entity: **Girl Scouts of South Carolina Mountains to Midlands**
Facility: Camp WaBak
Location: 36 Camp WaBak Road
Marietta, SC 29661
Mailing Address: 5 Independence Pointe, Suite 120
Greenville, SC 29615
County: Greenville
Previous Orders: None
Permit/ID Number: 2370680
Violations Cited: S.C. Code Ann. Regs. 61-58.17.K(1)

Summary: Girl Scouts of South Carolina Mountains to Midlands (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On November 27, 2018, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS tested present for total coliform and E. coli, which resulted in a violation of the maximum contaminant level (MCL) for E. coli.

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.

39) Order Type and Number: Consent Order 19-006-DW
Order Date: March 8, 2019
Individual/Entity: **AMT Properties, LLC**
Facility: Blythewood Stop-N-Shop
Location: 10447 Wilson Boulevard
Blythewood, SC 29016
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 4070914
Violations Cited: S.C. Code Ann. Regs. 61-58.7

Summary: AMT Properties, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On January 9, 2019, the PWS was inspected and rated unsatisfactory for failure to properly operate and maintain. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the well did not have a screened air vent; the electrical wiring was not in conduit; the concrete well pad was severely cracked; there was no housing for the bladder tank; the well did not have a well house and could not be locked to prevent entrance by unauthorized persons; there was no check valve; there were holes drilled into the sanitary seal; there was a capped pipe directly above the seal; valve maintenance records were not available for review; flushing records were not available for review; leak detection and repair records were not available for review; there was no pressure gauge; there was no emergency preparedness plan available for review; and there was no procedures manual available for review.

Action: The Individual/Entity is required to: correct the deficiencies; and pay a **stipulated penalty** in the amount of four thousand dollars (**$4,000.00**), should any requirement of the Order not be met.

40) Order Type and Number: Consent Order 19-007-DW
Order Date: March 18, 2019
Individual/Entity: **Town of Batesburg-Leesville**
Facility: Town of Batesburg-Leesville
Location: 120 West Church Street
Batesburg-Leesville, SC 29070
Mailing Address: Same
County: Lexington
Previous Orders: 13-045-DW
Permit/ID Number: 3210002
Violations Cited: S.C. Code Ann. Regs. 61-58.7

Summary: The Town of Batesburg-Leesville (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS). On December 20, 2018, the PWS was inspected and rated unsatisfactory for failure to properly operate and maintain. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the quantity of water at the source was not adequate to meet the projected maximum daily water demand of the service area; there was no valve maintenance program; there was no flushing program; the security gate was in disrepair; and the chemical metering pumps for the alum and caustic feed were in disrepair.

Action: The Individual/Entity is required to: correct the operation and maintenance deficiencies; and pay a **stipulated penalty** in the amount of four thousand dollars (**$4,000.00**) should any requirement of the Order not be met.

Water Pollution Enforcement

41) Order Type and Number: Consent Order 19-005-W
Order Date: February 5, 2019
Individual/Entity: **Moncks Corner Public Works Commission**
Facility: Moncks Corner PWC WWTF
Location: 418 Whitworth Road
Berkeley County, SC
Mailing Address: P.O. Box 266
Moncks Corner, SC 29461
County: Berkeley
Previous Orders: None
Permit/ID Number: NPDES Permit SC0021598
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: Moncks Corner Public Works Commission (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Berkeley County, South Carolina. On August 29, 2018, a Notice of Violation was issued as a result of violations of the permitted discharge limits for Escherichia coli (E. coli) as reported on 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 the effluent discharge limits of its National Pollutant Discharge Elimination System permit for E. coli.

Action: The Individual/Entity is required to: submit to the Department a corrective action plan (CAP) addressing the deficiencies; and, pay a civil penalty in the amount of one thousand, four hundred dollars **($1,400.00).**

42) Order Type and Number: Consent Order 19-008-W
Order Date: February 14, 2019
Individual/Entity: **Town of Andrews**
Facility: Town of Andrews WWCS
Location: 101 South Morgan Avenue
Andrews, SC 29510
Mailing Address: P.O. Box 378
Andrews, SC 29510
County: Georgetown
Previous Orders: None
Permit/ID Number: SSS000688

Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.640.3 (a) (2011).

Summary: The Town of Andrews (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater collection system (WWCS) located in Georgetown County, South Carolina. On May 23, 2018, a Notice of Noncompliance was issued as a result of its failure to complete certain requirements of Consent Order 14-048-W and Amendment to Consent Order 14-048-W, addressing proper operation and maintenance of the WWCS. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to properly operate and maintain its WWCS in accordance with its Satellite Sewer System Permit.

Action: The individual/Entity is required to: report to the Department all wastewater spills greater than one hundred (100) gallons; submit quarterly reports summarizing actions taken to address deficiencies in the WWCS; submit supplemental documentation to the viability study; submit documentation certifying that appropriate personnel have completed a wastewater collection course; retain a professional engineer to perform an inspection of the WWCS; submit results of the professional engineer's inspection of the WWCS; and, submit a corrective action plan to address deficiencies of the WWCS as identified by the professional engineer's inspection.

43) Order Type and Number: Consent Order 19-009-W
Order Date: February 15, 2019
Individual/Entity: **Town of Harleyville**
Facility: Harleyville WWTP
Location: Range Road and Highway 89
Harleyville, South Carolina
Mailing Address: P.O. Box 35
Harleyville, SC 29448
County: Dorchester
Previous Orders: None
Permit/ID Number: SC0038504
Violations Cited: Pollution Control Act, S.C. Code Ann. 48-1-110 (d) (Supp. 2008 and 2017); and Water Pollution Control Permits 3 S.C. Code Ann. Regs. 61-9.122.41(a).

Summary: The Town of Harleyville (Individual/Entity) owns and is responsible for a wastewater treatment plant (WWTP) located in Dorchester County, South Carolina. The Department issued a Notice of Violation on October 1, 2018, as result of the reported violations of the permitted limit for Ultimate Oxygen Demand and Ammonia-Nitrogen on discharge monitoring reports (DMRs) submitted for the June 2018 and July 2018 monitoring periods; and for E. coli on the DMRs for the July 2018 and August 2018 monitoring periods. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to comply with the effluent discharge limits of its National Pollutant Discharge Elimination System permit for UOD, Ammonia-Nitrogen, and E. coli.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) to address the deficiencies; and, pay a civil penalty in the amount eight thousand, four hundred dollars **($8,400.00)**.

44) Order Type and Number: Consent Order 19-010-W
Order Date: February 21, 2019
Individual/Entity: **Christopher Maxwell**
Facility: Stormwater Construction Site
Location: Saluda Waters Pointe
Saluda, SC
Mailing Address: 272 Saluda Waters Pointe
Leesville, SC 29070
County: Saluda
Previous Orders: None
Permit/ID Number: SCR10Z2W2
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-90 (A) (Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.26 (a) (1) (2011).

Summary: Christopher Maxwell (Individual/Entity) is responsible for land disturbing activity on property located in Saluda County, South Carolina. On June 7, 2018, a Notice of Noncompliance was issued as a result of unpermitted construction and unauthorized discharges of sediment associated with construction. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: initiated land disturbing activities without a permit from the Department, and discharged sediment into the environment, including waters of the state, in a manner other than in compliance with a permit issued by the Department.

Action: The Individual/Entity is required to: submit to the Department a Storm Water Pollution Prevention Plan (SWPPP); submit a report signed by a professional engineer confirming that the site is in compliance with the approved SWPPP; submit a Notice of Termination within thirty (30) days of stabilization of the site; and, pay a civil penalty in the amount of five hundred sixty dollars **($560.00).**

45) Order Type and Number: Consent Order 19-011-W
Order Date: February 21, 2019
Individual/Entity: **Milliken & Company**
Facility: Magnolia Plant
Location: 157 New Milliken Road, Blacksburg
Cherokee County, SC
Mailing Address: P.O. Box 1926 M482
Spartanburg, SC 29304
County: Cherokee
Previous Orders: None
Permit/ID Number: SC0003182
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: Milliken & Company (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Cherokee County, South Carolina. On October 3, 2018, a Notice of Violation was issued as a result of violations of the permitted discharge limits for biochemical oxygen demand (BOD) as reported on 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 the effluent discharge limits of its National Pollutant Discharge Elimination System permit for BOD.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) to address the deficiencies; submit quarterly progress reports of actions taken to attain compliance; and, pay a civil penalty in the amount of one thousand, four hundred dollars **($1,400.00).**

46) Order Type and Number: Consent Order 19-013-W
Order Date: March 5, 2019
Individual/Entity: **Reflective Recycling of SC, LLC**
Facility: former Reflective Recycling of SC, LLC WWTF
Location: 520 Calico Drive
Pacolet, SC
Cherokee County, SC
Mailing Address: 36181 East Lake Road, Suite 20
Palm Harbor, FL 34685
County: Cherokee
Previous Orders: None
Permit/ID Number: SC0049174
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.21 (2011).

Summary: Reflective Recycling of SC, LLC (Individual/Entity) is responsible for a wastewater treatment facility (WWTF) located in Cherokee County, South Carolina. On December 19, 2018, Department staff notified the Individual/Entity that it had failed to submit a timely and administratively complete application for renewal of its National Pollution Discharge Elimination System (NPDES) permit. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to submit to the Department an administratively complete application for renewal of its NPDES permit at least 180 days prior to the expiration of its permit.

Action: The Individual/Entity is required to: submit a closure plan for closure of the WWTF; submit a written request to cancel the NPDES permit within 30 days of the Department's approval of the final closure of the WWTF; and, pay a **stipulated penalty** in the amount of two thousand dollars **($2,000.00)** should any requirement of the Order not be met.

47) Order Type and Number: Consent Order 19-015-W
Order Date: March 8, 2019
Individual/Entity: **Town of Calhoun Falls**
Facility: Calhoun Falls WWTP
Location: 125 Walnut Street
Calhoun Falls, SC
Mailing Address: P.O. Box 246
Calhoun Falls, SC 29628
County: Abbeville
Previous Orders: None
Permit/ID Number: SC0025721

Violations Cited: Pollution Control Act, S.C. Code Ann. 48-1-90 (A) (1) (Supp. 2008 and 2017); Pollution Control Act, S.C. Code Ann. 48-1-110 (d) (Supp. 2008 and 2017) and Water Pollution Control Permits 24 S.C. Code Ann. Regs. 61-9.610.3 (Supp. 2011); and Pollution Control Act, S.C. Code Ann. 48-1-110 (d) (Supp. 2008 and 2017), Water Pollution Control Permits 24 S.C. Code Ann. Regs. 61-9.122.41 (a) (Supp. 2011), and NPDES Permit SC0025721 Part II.E and Part II J.l.c,

Summary: The Town of Calhoun Falls (Individual/Entity) owns and is responsible for a waste water treatment plant located in Abbeville County, South Carolina. On February 6, 2019, a Notice of Violation was issued as a result of an inspection. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: discharged untreated wastewater into the environment in a manner other than in compliance with a permit issued by the Department; failed to properly operate and maintain its collection system; and, failed to comply with a requirement, condition, or term contained in its National Pollutant Discharge Elimination System permit.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; submit weekly reports to the Department detailing actions taken to achieve compliance; and, pay a civil penalty in the amount of nine hundred and eighty dollars **($980.00)**; and pay a suspended penalty in the amount of eight thousand, eight hundred and twenty ($8,820.00) should any requirement of the Order not be met.

48) Order Type and Number: Consent Order 19-016-W
Order Date: March 11, 2019
Individual/Entity: **Grand Strand Water & Sewer Authority**
Facility: Schwartz, Bucksport, and Myrtle Beach WWTFs
Location: 1 Schwartz Plant Road
Horry County, SC
Mailing Address: P.O. Box 2368
Conway, SC 29528
County: Horry
Previous Orders: None
Permit/ID Number: SC0037753
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: Grand Strand Water & Sewer Authority (Individual/Entity) owns and is responsible for the proper operation and maintenance of Schwartz, Bucksport, and Myrtle Beach Wastewater Treatment Facilities (WWTFs) located in Horry County, South Carolina. On August 29, 2018, the Department issued a Notice of Violation as a result of violations of the permitted discharge limits for chronic effluent toxicity (CTOX) as reported on 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 the effluent discharge limits of its National Pollutant Discharge Elimination System permit for CTOX.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; perform a Toxicity Identification Evaluation/Toxicity Reduction Evaluation in the event that it observes an additional CTOX violation within one (1) year following

the completion of the CAP; submit quarterly progress reports; and, pay a civil penalty in the amount of two thousand, two hundred forty dollars **($2,240.00).**

49) Order Type and Number: Consent Order 19-017-W
Order Date: March 20, 2019
Individual/Entity: **South of the Border Motel**
Facility: South of the Border Motel WWTF
Location: 3346 Highway 301 North
Dillon County, SC
Mailing Address: P.O. Box 1328
Dillon, SC 29536
County: Dillon
Previous Orders: None
Permit/ID Number: SC0031801
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (l) (4) (2011).

Summary: South of the Border Motel (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Dillon County, South Carolina. On March 10, 2016, the Department issued a Notice of Violation. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulation as follows: failed to conduct chronic effluent toxicity (CTOX) testing as required by its National Pollutant Discharge Elimination System (NPDES) permit.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; and, pay a civil penalty in the amount of three thousand, nine hundred thirty-seven dollars **($3,937.00).**

50) Order Type and Number: Consent Order 19-019-W
Order Date: March 20, 2019
Individual/Entity: **Town of Ridgeway**
Facility: Ridgeway WWTF
Location: Junction S-34
Ridgeway, SC 29130
Mailing Address: P.O. Box 24
Ridgeway, SC 29130
County: Fairfield
Previous Orders: None
Permit/ID Number: SC0022900
Violations Cited: Pollution Control Act, S.C. Code Ann. 48-1-110 (d) (Supp. 2008 and 2017) and Water Pollution Control Permits, 3 S.C. Code Ann Regs 61-9.122.41(a) (2008 and 2017).

Summary: The Town of Ridgeway (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Fairfield County, South Carolina. On November 7, 2018, the Department issued a Notice of Alleged Violation to the Individual/Entity as a result of violations of the permitted discharge limits for Chronic Toxicity (CTOX) as reported on 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 the effluent discharge limits of the National Pollutant Discharge Elimination System permit for CTOX.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; perform a Toxicity Identification Evaluation/Toxicity Reduction Evaluation in the event that it observes an additional CTOX violation within one (1) year following the completion of the CAP; submit quarterly progress reports; and, pay a civil penalty in the amount of two thousand dollars **($2,000.00)**.

51) Order Type and Number: Consent Order 19-018-W
Order Date: March 22, 2019
Individual/Entity: **AVX Corporation**
Facility: Myrtle Beach Plant
Location: 2200 AVX Drive
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit/ID Number: SC0047953
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2017); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: AVX Corporation (Individual/Entity) owns and is responsible for the proper operation and maintenance of a groundwater treatment system (GTS) located in Horry County, South Carolina. On November 8, 2018, the Department issued a Notice of Violation as a result of violations of the permitted discharge limits for trichloroethylene (TCE) as reported on 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 the effluent discharge limits of the National Pollutant Discharge Elimination System permit for TCE.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; and, pay a civil penalty in the amount of four thousand, two hundred dollars **($4,200.00).**

52) Order Type and Number: Consent Order 19-020-W
Order Date: March 22, 2019
Individual/Entity: **Robert Collins Company, LLC**
Facility: Hyde Park Mine WWTF
Location: Hyde Park Road
Ravenel, SC
Charleston County, SC
Mailing Address: P.O. Box 284
Barnwell, SC 29812
County: Charleston
Previous Orders: None
Permit/ID Number: SCG731341

Violations Cited: Pollution Control Act, S.C Code Ann § 48-1- 110 (d) (2008 & Supp. 2018); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: Robert Collins Company, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) serving the Hyde Park Mine located in Charleston County, South Carolina. On October 25, 2018, the Department issued a Notice of Violation as a result of violations of the permitted discharge limits for pH as reported on 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 the effluent discharge limits of the National Pollutant Discharge Elimination System permit for pH.

Action: The Individual/Entity is required to: submit a corrective action plan (CAP) addressing the deficiencies; and, pay a civil penalty in the amount of five thousand, six hundred dollars **($5,600.00).**

Dams Enforcement

53)

Order Type and Number:	Consent Agreement 19-004-W
Order Date:	February 5, 2019
Individual/Entity:	**Springwood Lake Homeowners Association**
Facility:	Springwood Lake Dam
Location:	Latitude: 34.074650758 Longitude: -80.95265347
Mailing Address:	7901 Nell Street Columbia, SC 29223
County:	Richland
Previous Orders:	March 22, 2018 Emergency Order
Permit/ID Number:	D 0558
Law Citations:	S.C. Dams and Reservoirs Safety Act, S.C. Code Ann. § 49-11-110, *et seq*., (2008) and Dams and Reservoirs Safety Act Regulation 72.1, *et seq*. (2012)

Summary: Springwood Lake Homeowners Association (Individual/Entity) owns and is responsible for the proper operation and maintenance of the Springwood Lake Dam in Anderson County, South Carolina. On March 22, 2018, the Department issued an Emergency Order as a result of unsafe conditions at the dam. The Agreement is entered into by the Department and the Individual/ Entity with respect to remedial actions addressing deficiencies in the condition of the dam.

Action: The Individual/Entity is required to: maintain a safe water level as to not present a hazard to surrounding residents and property; submit notification confirming completed stabilization measures; submit documentation that a professional engineer has been retained; submit monthly summary updates of actions taken at the dam and progress towards finalizing a special tax district; submit notification certifying special tax district has been established; submit notification certifying any financial arrangements are in place to fund repairs; submit a permit application for the repair or removal of the Dam; submit documentation that all necessary local,

state, and federal permit applications have been submitted; complete all construction activities after receiving permit; and submit notification of the completion.

54) Order Type and Number: Consent Order 19-006-W
Order Date: February 12, 2019
Individual/Entity: **Von Hollen Investments, LLC**
Facility: Hollen Pond Dam
Location: 3 Bridges Road and Caledonia Drive
Easley, SC
Mailing Address: 100 Andrea Circle
Easley, SC 29642
County: Anderson
Previous Orders: None
Permit/ID Number: D 3138
Law Citations: S.C. Dams and Reservoirs Safety Act, S.C. Code Ann. § 49-11-110, *et seq*., (2008) and Dams and Reservoirs Safety Act Regulation 72.1, *et seq*. (2012)

Summary: Von Hollen Investments, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of the Hollen Pond Dam in Anderson County, South Carolina. On September 12, 2018, Department staff visited the dam and observed the dam was intentionally breached prior to obtaining a Department issued permit for the repair or removal of the dam. The Individual/Entity has failed to comply with the S.C. Dams and Reservoirs Safety Act in that a Department issued permit was not obtained prior to initiating modifications to the dam.

Action: The Individual/Entity is required to: maintain the Dam in a condition that does not impound water until the Dam is repaired or removed from the property; submit documentation that a professional engineer has been retained; submit a permit application for the repair or removal of the Dam; submit documentation that all necessary local, state, and federal permit applications have been submitted; and submit notification of the completion.

BUREAU OF AIR QUALITY

55) Order Type and Number: Consent Order 19-007-A
Order Date: February 5, 2019
Individual/Entity: **Scout Boats, Inc.**
Facility: Scout Boats, Inc.
Location: 2531 Highway 78 West
Summerville, SC 29483
Mailing Address: Same
County: Dorchester
Previous Orders: None
Permit/ID Number: 0900-0048
Violations Cited: 5 S.C. Code Ann. Regs. 61-62.1, Section II, *Permit Requirements*

Summary: Scout Boats, Inc. (Individual/Entity), located in Summerville, South Carolina, manufactures fiberglass boats and parts. On October 18, 2016, the Department conducted a

comprehensive inspection. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: failed to obtain a construction permit from the Department prior to commencement of construction of the paint spray both in Building C; submit written notification to the Department of the date construction of the paint spray booth in Building C was commenced; submit written notification of the actual date of initial startup of the paint spray booth in Building C; and obtain an operating permit when the paint spray booth in Building C was placed into operation.

Action: The Individual/Entity is required to: pay a civil penalty in the amount of seven thousand dollars **($7,000.00)**. All violations were corrected prior to the issuance of the Order.

56) Order Type and Number: Consent Order 19-008-A
Order Date: February 5, 2019
Individual/Entity: **Mr. Drew Jarrell, Individually and d.b.a. Environmental and Safety Training Institute**
Facility: N/A
Location: 2870 Reidville Road, Suite Three, Spartanburg, SC 29301
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: ATC-0068
Violations Cited: 7 S.C. Code Ann. Regs. 61-86.1, Standards of Performance for Asbestos Projects

Summary: Mr. Drew Jarrell, Individually and d.b.a. Environmental and Safety Training Institute (Individual/Entity), is a Department-licensed asbestos training course provider located in Spartanburg, South Carolina. A review of Department records indicates written notifications were not provided to the Department prior to presenting training courses on December 19, 2017, December 20, 2017, January 3, 2018, January 24, 2018, May 16, 2018, and May 17, 2018, and that ESTI did not submit the applicable course roster information following conclusion of these training courses. The Individual/Entity has violated South Carolina Standards of Performance for Asbestos Projects as follows: failed to submit required written notices to the Department at least ten calendar days prior to the first day of presenting multiple training courses within the State and failed to submit the required training course information to the Department within seven days of concluding multiple training courses presented within the State.

Action: The Individual/Entity is required to: henceforth notify the Department in writing at least ten calendar days prior to the first day of presenting a training course within the State; henceforth submit the required course information to the Department within seven days of conclusion of a training course presented within the State; and, pay a civil penalty in the amount of five hundred dollars **($500.00)**.

57) Order Type and Number: Consent Order 19-009-A
Order Date: February 5, 2019
Individual/Entity: **Carlisle Finishing, LLC**
Facility: Carlisle Finishing, LLC
Location: 3863 Carlisle Chester Highway, Carlisle, SC 29031

Mailing Address: Same
County: Union
Previous Orders: N/A
Permit/ID Number: 2180-0003
Violations Cited: 5 S.C. Code Ann. Regs. 61-62.5 and 5 S.C. Code Ann. Regs. 61-62.1, Section II, Permit Requirements

Summary: Carlisle Finishing, LLC, (Individual/Entity), located in Carlisle, South Carolina, operates a textile finishing mill. On August 21, 2018, a Department-approved source performance test was conducted. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: failed to limit opacity from Boiler 1 and the scrubber to 40 percent as required by Standard No.1 and the Title V Permit.

Action: The Individual/Entity is required to: henceforth limit opacity from Unit ID 01 and associated control devices to 40 percent as required by Standard No.1 and the Title V Permit; and pay a civil penalty in the amount of six thousand dollars **($6,000.00)**.

58) Order Type and Number: Consent Order 19-010-A
Order Date: February 7, 2019
Individual/Entity: **Harris Carpets and Linoleum, Inc.**
Facility: Clemson University
Location: Long Hall, Room 212
Mailing Address: 51 Civic Center Boulevard Ext.
Anderson, SC 29625
County: Pickens
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: U.S. EPA Regulations at 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos, and 7 S.C. Code Ann. Regs. 61-86.1, Standards of Performance for Asbestos Projects

Summary: Harris Carpets and Linoleum, Inc. (Individual/Entity) is a commercial construction contractor located in Anderson, South Carolina. The Individual/Entity performed renovation activities at Clemson University. On July 30, 2018, Clemson University self-disclosed violations related to the Individual/Entity's improper removal of asbestos-containing floor tile. The Individual/Entity has violated U.S. EPA Regulations and South Carolina Standards of Performance for Asbestos Projects as follows: failed to submit written notices of intent to renovate to the Department, at least 10 working days prior to beginning a regulated project; failed to ensure asbestos-containing material was removed in accordance with the applicable work practice requirements while engaged in a regulated project; failed to obtain a Department-issued asbestos project license prior to engaging in a regulated asbestos project; failed to ensure that each worker and supervisor employed at the abatement project site met the applicable training and licensing requirements prior to engaging in a regulated asbestos project.

Action: The Individual/Entity is required to: not engage in future regulated asbestos projects unless licensed to do so by the Department; and, pay a civil penalty in the amount of six thousand dollars **($6,000.00).**

59) Order Type and Number: Consent Order 19-011-A
Order Date: February 7, 2019
Individual/Entity: **Calder Brothers Corporation**
Facility: Calder Brothers Corporation
Location: 250 East Warehouse Court
Taylors, SC 29687
Mailing Address: Same
County: Greenville
Previous Orders: N/A
Permit/ID Number: 1200-0457
Violations Cited: U.S. EPA 40 CFR Part 63 and 5 S.C. Code Ann. Regs. 61-62.63, Subpart XXXXXX

Summary: Calder Brothers Corporation (Individual/Entity), located in Taylors, South Carolina, manufactures asphalt paving equipment. On June 15, 2018, the Individual/Entity determined it was an existing source subject to federal regulations. The Individual/Entity has violated U.S. EPA Regulations and South Carolina Air Pollution Control Regulations as follows: failed to achieve compliance with the applicable provisions of Subpart XXXXXX no later than July 25, 2011; failed to submit an initial notification under Subpart XXXXXX no later than July 25, 2011; failed to submit a NOCS pursuant to Subpart XXXXXX no later than November 22, 2011; failed to prepare and submit annual certification and compliance reports for each affected source according to the requirements of Subpart XXXXXX.

Action: The Individual/Entity is required to: henceforth comply with the applicable provisions of Subpart 6X including notification, record keeping, and monitoring requirements; and pay a civil penalty in the amount of six thousand dollars **($6,000.00)**.

60) Order Type and Number: Consent Order 19-012-A
Order Date: February 14, 2019
Individual/Entity: **Cruz Enterprises, Inc.**
Facility: Cruz Enterprises, Inc.
Location: 2468 Cape Road
Johns Island, SC 29455
Mailing Address: Same
County: Charleston
Previous Orders: 13-041-A ($4,000.00)
Permit/ID Number: N/A
Violations Cited: 5 S.C. Code Ann. Regs. 61-62.2, *Prohibition of Open Burning*

Summary: Cruz Enterprises, Inc. (Individual/Entity), located in Johns Island, South Carolina, performs tree trimming, tree removal, and landscaping. The Department conducted an open burning investigation on April 18, 2017, in response to a complaint. The Individual/Entity has violated South Carolina Air Pollution Control Regulations as follows: burned materials other than those specifically allowed by Section I of the regulation.

Action: The Individual/Entity is required to: cease all open burning except in accordance with the open burning regulations; and pay a civil penalty in the amount of four thousand **($4,000.00)**.

61) Order Type and Number: Consent Order 19-013-A
Order Date: February 15, 2019
Individual/Entity: **Mr. Troy Green**
Facility: Lloyd Asbestos & Demolition Services, LLC
Location: 851 Sumter Hwy
Camden, SC
Mailing Address: 108 Sherbrook Drive
Columbia, SC 29223
County: Kershaw
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: U.S. EPA 40 CFR Part 61, NESHAP, Subpart M, National Emission Standards for Asbestos, and 7 S.C. Code Ann. Regs. 61-86.1, Standards of Performance for Asbestos Projects

Summary: Lloyd Asbestos & Demolition Services, LLC (Individual/Entity), held a Department-issued asbestos abatement contractor license from August 17, 2017, to August 17, 2018. The Department conducted a compliance inspection of an asbestos abatement project on December 8, 2017, at location in Camden, SC. The Individual/Entity has violated U.S. EPA Regulations and the South Carolina Air Pollution Control Regulations as follows: failed to adhere to multiple NESHAP work practice requirements during an asbestos abatement project.

Action: The Individual/Entity is required to: henceforth comply with the regulations and pay a civil penalty in the amount of seven thousand dollars **($7,000.00)**.

62) Order Type and Number: Consent Order 19-015-A
Order Date: March 22, 2019
Individual/Entity: **McCall Farms, Inc.**
Facility: McCall Farms, Inc.
Location: 6615 South Irby Street
Effingham, SC 29541
Mailing Address: Same
County: Florence
Previous Orders: None
Permit/ID Number: 1040-0070
Violations Cited: 5 S.C. Code Ann. Regs. 61-62.1, Section II, Permit Requirements

Summary: McCall Farms, Inc. (Individual/Entity), is a fruit and vegetable canning operation. On August 23, 2018, the Department conducted an inspection and observed unpermitted construction and operation of new equipment. The Individual/Entity violated South Carolina Air Pollution Control Regulations as follows: failed to obtain a construction permit prior to commencement of construction, alteration, and addition of equipment; failed to submit written notification of the date construction was commenced within thirty days; and failed to submit written notification of the actual date of initial startup within fifteen days.

Action: The Individual/Entity is required to: obtain construction permits and submit written notifications; and pay a civil penalty in the amount of five thousand dollars **($5,000.00)**.

BUREAU OF ENVIRONMENTAL HEALTH SERVICES

Food Safety Enforcement

63)

Order Type and Number:	Administrative Order 2018-206-01-046
Order Date:	March 7, 2019
Individual/Entity:	**Townville ©, LLC, d.b.a. Townville ©**
Facility:	Townville Café
Location:	6601 Highway 24 Townville, SC 29689
Mailing Address:	Same
County:	Anderson
Previous Orders:	None
Permit Number:	04-206-03753
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Townville ©, LLC d.b.a. Townville © (Individual/Entity) is a restaurant located in Townville, South Carolina. The Department conducted inspections on September 18, 2018, September 28, 2018, and October 8, 2018. The Individual/Entity has 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 provide equipment sufficient in number and capacity to maintain food temperatures for cooling and heating food and holding cold and hot 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 one thousand dollars **($1,000.00)**.

64)

Order Type and Number:	Administrative Order 2018-206-08-011
Order Date:	March 7, 2019
Individual/Entity:	**Substation II**
Facility:	Substation II
Location:	7 Robert Smalls Parkway Beaufort, SC 29906
Mailing Address:	Same
County:	Beaufort
Previous Orders:	None
Permit Number:	07-206-02755
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Substation II (Individual/Entity) is a restaurant located in Beaufort, South Carolina. The Department conducted inspections on August 10, 2017, August 21, 2017, July 17, 2018, July 27, 2018, and August 10, 2018. The Individual/Entity has 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 two thousand dollars **($2,000.00)**.

65) Order Type and Number: Consent Order 2018-206-01-036
Order Date: February 1, 2019
Individual/Entity: **Cracker Jack's Café**
Facility: Cracker Jack's Café
Location: 1146 Jackson Street
Anderson, SC 29625
Mailing Address: P.O. Box 554
Anderson, SC 29621
County: Anderson
Previous Orders: 2017-206-01-025 ($800.00)
Permit Number: 04-206-03985
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Cracker Jack's Café (Individual/Entity) is a restaurant located in Anderson, South Carolina. The Department conducted inspections on December 19, 2016, August 30, 2017, and July 30, 2018. The Individual/Entity has 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 that when time without temperature control is used as a public health control, the food in unmarked containers or packages shall be discarded.

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 dollars **($1,000.00)**.

66) Order Type and Number: Consent Order 2018-206-01-042
Order Date: February 1, 2019
Individual/Entity: **Huddle House**
Facility: Huddle House
Location: 320 South Main Street
Saluda, SC 29138
Mailing Address: P.O. Box 31003
Greenville, SC 29608
County: Saluda
Previous Orders: None
Permit Number: 41-206-00900
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Huddle House (Individual/Entity) is a restaurant located in Saluda, South Carolina. The Department conducted inspections on June 21, 2018, June 22, 2018, August 17, 2018, and October 8, 2018. The Individual/Entity has 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, three hundred fifty dollars **($1,350.00)**.

67) Order Type and Number: Consent Order 2018-206-01-054
Order Date: February 1, 2019
Individual/Entity: **Gray House**
Facility: Gray House
Location: 111 Stone's Throw Avenue
Starr, SC 29684
Mailing Address: P.O. Box 111
Starr, SC 29684
County: Anderson
Previous Orders: None
Permit Number: 04-206-01803
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Gray House (Individual/Entity) is a restaurant located in Starr, South Carolina. The Department conducted inspections on December 21, 2016, December 12, 2017, and December 7, 2018. The Individual/Entity has 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.

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 2018-206-03-175
Order Date: February 1, 2019
Individual/Entity: **Subway #12564**
Facility: Subway #12564
Location: 1133 Highway 9 Bypass West, Suite D
Lancaster, SC 29720
Mailing Address: P.O. Box 36128
Rock Hill, SC 29732
County: Lancaster
Previous Orders: None
Permit Number: 29-206-00765
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Subway #12564 (Individual/Entity) is a restaurant located in Lancaster, South Carolina. The Department conducted inspections on November 14, 2017, March 6, 2018, and December 19, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other 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 four hundred dollars **($400.00)**.

69) Order Type and Number: Consent Order 2018-206-03-176
Order Date: February 1, 2019
Individual/Entity: **Danny's Pizza**
Facility: Danny's Pizza
Location: 200 North Doby's Bridge Road
Fort Mill, SC 29715
Mailing Address: 9532 Hebron Commerce Drive
Charlotte, NC 28273
County: York
Previous Orders: None
Permit Number: 46-206-00610
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Danny's Pizza (Individual/Entity) is a restaurant located in Fort Mill, South Carolina. The Department conducted inspections on June 13, 2017, March 22, 2018, and November 26, 2018. The Individual/Entity has 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.

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 2018-206-04-007
Order Date: February 1, 2019
Individual/Entity: **Joe's Grill**
Facility: Joe's Grill
Location: 360 Russell Street
Darlington, SC 29532
Mailing Address: Same
County: Darlington
Previous Orders: None
Permit Number: 16-206-03157
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Joe's Grill (Individual/Entity) is a restaurant located in Darlington, South Carolina. The Department conducted inspections on May 23, 2018, June 1, 2018, and June 11, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure employees wash hands after engaging in activities that contaminate their hands and failed to convey sewage to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

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 2018-206-04-009
Order Date: February 1, 2019
Individual/Entity: **Golden Chick**
Facility: Golden Chick
Location: 147 South Ron McNair Boulevard
Lake City, SC 29560
Mailing Address: 1131 Rockingham Drive #250
Richardson, TX 75080
County: Florence
Previous Orders: None
Permit Number: 21-206-02732
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Golden Chick (Individual/Entity) is a restaurant located in Lake City, South Carolina. The Department conducted inspections on February 17, 2017, October 30, 2017, and October 10, 2018. The Individual/Entity has 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 2018-206-04-041
Order Date: February 1, 2019
Individual/Entity: **Royal Food Store**
Facility: Royal Food Store
Location: 123 East Front Street
Ward, SC 29166
Mailing Address: Same
County: Saluda
Previous Orders: None
Permit Number: 41-206-00935
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Royal Food Store (Individual/Entity) is a convenience store located in Ward, South Carolina. The Department conducted inspections on July 5, 2017, February 16, 2018, and August 15, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that the handwashing sinks were accessible at all times.

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 four hundred dollars **($400.00)**.

73) Order Type and Number: Consent Order 2018-206-06-113
Order Date: February 1, 2019
Individual/Entity: **Bob Evans Restaurant #249**
Facility: Bob Evans Restaurant #249
Location: 3384 Waccamaw Boulevard

	Myrtle Beach, SC 29579
Mailing Address:	8111 Smith's Mill Road
	New Albany, OH 43054
County:	Horry
Previous Orders:	None
Permit Number:	26-206-00988
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Bob Evans Restaurant #249 (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on October 30, 2017, May 17, 2018, and August 8, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure written procedures were in place and made available to the Department when the facility uses time as a public health control.

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 2018-206-06-120
	Order Date:	February 1, 2019
	Individual/Entity:	**The Noizy Oyster**
	Facility:	The Noizy Oyster
	Location:	101 South Kings Highway
		Myrtle Beach, SC 29577
	Mailing Address:	P.O. Box 8036
		Myrtle Beach, SC 29577
	County:	Horry
	Previous Orders:	None
	Permit Number:	26-206-13169
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: The Noizy Oyster (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on September 12, 2017, March 19, 2018, August 13, 2018, and October 30, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly thaw 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 four hundred dollars **($400.00)**.

75)	Order Type and Number:	Consent Order 2018-206-06-133
	Order Date:	February 1, 2019
	Individual/Entity:	**River City Café**
	Facility:	River City Café
	Location:	4742 South Kings Highway
		North Myrtle Beach, SC 29582
	Mailing Address:	3348 Huger Street
		Myrtle Beach, SC 29577

County: Horry
Previous Orders: None
Permit Number: 26-206-10084
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: River City Café (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on September 25, 2017, March 1, 2018, March 8, 2018, and October 4, 2018. The Individual/Entity has 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, six hundred dollars **($1,600.00)**.

76) Order Type and Number: Consent Order 2018-206-07-056
Order Date: February 1, 2019
Individual/Entity: **Sbarro #688**
Facility: Sbarro #688
Location: 2150 Northwoods Boulevard, FC-2
North Charleston, SC 29406
Mailing Address: 401 Broadhollow Road
Melville, NY 11747
County: Charleston
Previous Orders: 2016-206-07-084 ($800.00)
Permit Number: 10-206-02304
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sbarro #688 (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on September 28, 2017, July 30, 2018, August 9, 2018, and August 16, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that a person in charge is certified by a food protection manager certification program that is recognized by the Conference for Food Protection.

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 four hundred dollars **($400.00)**.

77) Order Type and Number: Consent Order 2018-206-07-066
Order Date: February 1, 2019
Individual/Entity: **Iacofano's Catering & Food Service**
Facility: Iacofano's Catering & Food Service
Location: 1749 Sam Rittenberg Boulevard
Charleston, SC 29407
Mailing Address: Same
County: Charleston
Previous Orders: 2016-206-07-078 ($1,750.00)
Permit Number: 10-206-09200
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Iacofano's Catering & Food Service (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on March 8, 2018 and August 20, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to use effective methods to cool cooked time/temperature control for safety foods and 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.

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, seven hundred fifty dollars **($1,750.00)**.

78)

Order Type and Number:	Consent Order 2018-206-07-080
Order Date:	February 1, 2019
Individual/Entity:	**Grand Buffet**
Facility:	Grand Buffet
Location:	4950 Centre Pointe Drive North Charleston, SC 29418
Mailing Address:	Same
County:	Charleston
Previous Orders:	2016-206-07-006 ($550.00); 2017-206-07-004 ($1,200.00)
Permit Number:	10-206-06253
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Grand Buffet (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on December 4, 2017, December 14, 2017, December 4, 2018, and December 7, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper cold holding temperatures of time/temperature control for safety foods and failed to maintain proper hot 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 three thousand, seven hundred fifty dollars **($3,750.00)**.

79)

Order Type and Number:	Consent Order 2018-206-07-082
Order Date:	February 1, 2019
Individual/Entity:	**Jim N Nicks BBQ**
Facility:	Jim N Nicks BBQ
Location:	4964 Centre Pointe Drive North Charleston, SC 29418
Mailing Address:	Same
County:	Charleston
Previous Orders:	None
Permit Number:	10-206-06849
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Jim N Nicks BBQ (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on October 19, 2016, January 24, 2017, December 7, 2017, and December 4, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

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)**.

80) Order Type and Number: Consent Order 2018-206-02-002
Order Date: February 4, 2019
Individual/Entity: **Ink 'N' Ivy**
Facility: Ink 'N' Ivy
Location: 21 East Coffee Street
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2018-206-02-015 ($1,600.00)
Permit Number: 23-206-11423
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Ink 'N' Ivy (Individual/Entity) is a restaurant located in Greenville, South Carolina. The Department conducted inspections on May 15, 2017, February 22, 2018, November 29, 2018, and December 6, 2018. The Individual/Entity has 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; failed to use effective methods to cool cooked time/temperature control for safety foods; failed to maintain proper holding temperatures of time/temperature control for safety foods; failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times; and failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 two thousand, two hundred fifty dollars **($2,250.00)**.

81) Order Type and Number: Consent Order 2018-206-02-062
Order Date: February 4, 2019
Individual/Entity: **Purple International Bistro and Sushi**
Facility: Purple International Bistro and Sushi
Location: 933 South Main Street
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2016-206-02-041 ($800.00);
2018-206-02-001 ($1,000.00)

Permit Number: 23-206-11185
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Purple International Bistro and Sushi (Individual/Entity) is a restaurant located in Greenville, South Carolina. The Department conducted inspections on February 2, 2017, November 29, 2017, and September 18, 2018. The Individual/Entity has 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.

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 2018-206-03-169
Order Date: February 4, 2019
Individual/Entity: **British Bulldog**
Facility: British Bulldog
Location: 1220 Bower Parkway, Suite E10
Columbia, SC 29212
Mailing Address: Same
County: Lexington
Previous Orders: 2018-206-03-070 ($550.00)
Permit Number: 32-206-05808
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: British Bulldog (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted an inspection on November 6, 2018. The Individual/Entity has 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 dollars **($1,000.00)**.

83) Order Type and Number: Consent Order 2018-206-06-130
Order Date: February 4, 2019
Individual/Entity: **Wahoo's Fish House**
Facility: Wahoo's Fish House
Location: 3993 Highway 17 Business
Murrells Inlet, SC 29576
Mailing Address: Same
County: Georgetown
Previous Orders: 2015-206-01-002 ($800.00)
Permit Number: 22-206-06217
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wahoo's Fish House (Individual/Entity) is a restaurant located in Murrells Inlet, South Carolina. The Department conducted inspections on November 2, 2017, November 13, 2017,

and September 7, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to comply with the HACCP plan and procedures that are submitted and approved as a basis for the modification or waiver and failed to maintain and provide to the Department, upon request, records that demonstrate the HACCP plan is being employed.

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 2018-206-06-162
Order Date:	February 4, 2019
Individual/Entity:	**Avista Resort**
Facility:	Avista Resort
Location:	300 North Ocean Boulevard North Myrtle Beach, SC 29582
Mailing Address:	Same
County:	Horry
Previous Orders:	2015-206-06-015 ($1,200.00); 2018-206-06-094 ($400.00)
Permit Number:	26-206-09748
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Avista Resort (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted an inspection on November 16, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor.

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 two hundred fifty dollars **($250.00)**.

85)

Order Type and Number:	Consent Order 2018-206-06-164
Order Date:	February 4, 2019
Individual/Entity:	**Mexico Lindo**
Facility:	Mexico Lindo
Location:	2801 North Kings Highway Myrtle Beach, SC 29577
Mailing Address:	Same
County:	Horry
Previous Orders:	None
Permit Number:	26-206-08367
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Mexico Lindo (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on August 15, 2018, August 22, 2018, and December 3, 2018. The Individual/Entity has 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)**.

86) Order Type and Number: Consent Order 2018-206-07-074
Order Date: February 4, 2019
Individual/Entity: **Locals Bar**
Facility: Locals Bar
Location: 1150-B Queensborough Boulevard
Mount Pleasant, SC 29464
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-07354
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Locals Bar (Individual/Entity) is a restaurant located in Mount Pleasant, South Carolina. The Department conducted inspections on October 3, 2018, October 4, 2018, and October 8, 2018. The Individual/Entity has 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 provide equipment sufficient in number and capacity to maintain food temperatures for cooling and heating food and holding cold and hot 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)**.

87) Order Type and Number: Consent Order 2019-206-02-005
Order Date: February 4, 2019
Individual/Entity: **Westin Poinsett Hotel**
Facility: Westin Poinsett Hotel
Location: 120 North Main Street
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2018-206-02-021 ($800.00)
Permit Number: 23-206-07200
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Westin Poinsett Hotel (Individual/Entity) operates a restaurant located in Greenville, South Carolina. The Department conducted an inspection on December 4, 2018. The Individual/Entity has 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.

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 dollars **($1,000.00)**.

88) Order Type and Number: Consent Order 2018-206-03-159
Order Date: February 6, 2019
Individual/Entity: **Frayed Knot Bar & Grill**
Facility: Frayed Knot Bar & Grill
Location: 1701 Dreher Island Road
Chapin, SC 29036
Mailing Address: Same
County: Lexington
Previous Orders: 2016-206-03-050 ($800.00)
Permit Number: 32-206-06134
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Frayed Knot Bar & Grill (Individual/Entity) is a restaurant located in Chapin, South Carolina. The Department conducted inspections on July 7, 2017, September 6, 2017, September 15, 2017, July 20, 2018, August 24, 2018, and August 30, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to frequently clean the warewashing machine, the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, raw foods, or laundering wiping cloths, and drainboards; failed to ensure floors, floor coverings, walls, wall coverings, and ceilings were designed, constructed, and installed so they are smooth and easily cleanable; and failed to ensure that refused, recyclables, and returnables were removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

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 six hundred dollars **($600.00)**.

89) Order Type and Number: Consent Order 2018-206-04-010
Order Date: February 6, 2019
Individual/Entity: **Leo's of Lugoff**
Facility: Leo's of Lugoff
Location: 698 Highway 1 South
Lugoff, SC 29078
Mailing Address: Same
County: Kershaw
Previous Orders: None
Permit Number: 28-206-00778
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Leo's of Lugoff (Individual/Entity) is a restaurant located in Lugoff, South Carolina. The Department conducted inspections on October 9, 2018, October 18, 2018, October 26, 2018, November 2, 2018, November 9, 2018, November 16, 2018, December 6, 2018, December 14, 2018, and December 20, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other 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 two thousand, eight hundred dollars **($2,800.00)**.

90) Order Type and Number: Consent Order 2019-206-02-003
Order Date: February 6, 2019
Individual/Entity: **India Palace Restaurant**
Facility: India Palace Restaurant
Location: 59 Liberty Lane
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2018-206-02-018 ($1,800.00)
Permit Number: 23-206-05955
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: India Palace Restaurant (Individual/Entity) is a restaurant located in Greenville, South Carolina. The Department conducted an inspection on November 19, 2018. The Individual/Entity has 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; failed to properly cool cooked time/temperature control for safety foods; failed to use effective methods to cool cooked time/temperature control for safety foods; and failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 fifty dollars **($1,250.00)**.

91) Order Type and Number: Consent Order 2018-206-06-156
Order Date: February 7, 2019
Individual/Entity: **Angus Steak House**
Facility: Angus Steak House
Location: 2011 South Kings Highway
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12569
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Angus Steak House (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on October 4, 2017, May 16, 2018, and December 10, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the 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 two hundred dollars **($200.00)**.

92) Order Type and Number: Consent Order 2018-206-06-159
Order Date: February 7, 2019
Individual/Entity: **Bombay at the Beach**
Facility: Bombay at the Beach
Location: 702 North Kings Highway
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: 2018-206-06-123 ($200.00)
Permit Number: 26-206-13564
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Bombay at the Beach (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on February 8, 2018, July 31, 2018, and November 13, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 two hundred dollars **($200.00)**.

93) Order Type and Number: Consent Order 2018-206-07-065
Order Date: February 7, 2019
Individual/Entity: **Kickin' Chicken**
Facility: Kickin' Chicken
Location: 800 North Main Street
Summerville, SC 29483
Mailing Address: 1459 Stuart Engels Boulevard #202
Mount Pleasant, SC 29464
County: Dorchester
Previous Orders: 2015-206-07-080 ($800.00)
Permit Number: 18-206-05586
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Kickin' Chicken (Individual/Entity) is a restaurant located in Summerville, South Carolina. The Department conducted inspections on September 6, 2017, September 5, 2018, and September 6, 2018. The Individual/Entity has 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 two thousand, seven hundred fifty dollars **($2,750.00)**.

94) Order Type and Number: Consent Order 2019-206-06-001
Order Date: February 7, 2019
Individual/Entity: **Sarku Hibachi Buffet**
Facility: Sarku Hibachi Buffet

Location: 901 Highway 17 North
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: 2018-206-06-091 ($400.00)
Permit Number: 26-206-13670
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sarku Hibachi Buffet (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted an inspection on December 12, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that multiuse food-contact surfaces were smooth, free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections, free of sharp internal angles, corners, and crevices, finished to have smooth welds and joints, and accessible for cleaning.

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 dollars **($500.00)**.

95) Order Type and Number: Consent Order 2019-206-06-002
Order Date: February 7, 2019
Individual/Entity: **Landmark Gazebo Restaurant**
Facility: Landmark Gazebo Restaurant
Location: 1501 South Ocean Boulevard
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: 2017-206-06-123 ($800.00)
Permit Number: 26-206-06766
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Landmark Gazebo Restaurant (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on April 3, 2018, July 5, 2018, and November 7, 2018. The Individual/Entity has 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.

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 2018-206-03-132
Order Date: February 8, 2019
Individual/Entity: **Wild Wing Café**
Facility: Wild Wing Café
Location: 1150 Bower Parkway
Columbia, SC 29212
Mailing Address: 202 Coleman Boulevard
Mount Pleasant, SC 29464

County: Lexington
Previous Orders: None
Permit Number: 32-206-05975
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wild Wing Cafe (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on February 21, 2018, March 1, 2018, August 21, 2018, August 31, 2018, and September 6, 2018. The Individual/Entity has 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 two thousand, four hundred dollars **($2,400.00)**.

97) Order Type and Number: Consent Order 2018-206-03-162
Order Date: February 8, 2019
Individual/Entity: **Taqueria El Manhattan**
Facility: Taqueria El Manhattan
Location: 1618 Memorial Park Road
Lancaster, SC 29720
Mailing Address: Same
County: Lancaster
Previous Orders: 2016-206-03-123 ($800.00);
2017-206-03-111 ($1,000.00)
Permit Number: 29-206-01465
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Taqueria El Manhattan (Individual/Entity) is a restaurant located in Lancaster, South Carolina. The Department conducted inspections on October 12, 2016, October 20, 2016, October 9, 2017, and October 4, 2018. The Individual/Entity has 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.

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)**.

98) Order Type and Number: Consent Order 2019-206-03-003
Order Date: February 8, 2019
Individual/Entity: **Tokyo Buffet**
Facility: Tokyo Buffet
Location: 109 Woodland Hills Road
Columbia, SC 29210
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: 32-206-06388

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

Summary: Tokyo Buffet (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on October 12, 2017, June 29, 2018, and January 9, 2019. The Individual/Entity has 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.

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)**.

99) Order Type and Number: Consent Order 2019-206-04-001
Order Date: February 8, 2019
Individual/Entity: **Sam Kendall's**
Facility: Sam Kendall's
Location: 134 East Carolina Avenue
Hartsville, SC 29550
Mailing Address: 1043 Broad Street
Camden, SC 29020
County: Darlington
Previous Orders: None
Permit Number: 16-206-03187
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sam Kendall's (Individual/Entity) is a restaurant located in Hartsville, South Carolina. The Department conducted inspections on June 7, 2017, June 4, 2018, and November 7, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly thaw 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 two hundred dollars **($200.00)**.

100) Order Type and Number: Consent Order 2018-206-02-049
Order Date: February 12, 2019
Individual/Entity: **Waffle House #2243**
Facility: Waffle House #2243
Location: 7505 Highway 76
Pendleton, SC 29670
Mailing Address: P.O. Box 6450
Norcross, GA 30091
County: Anderson
Previous Orders: None
Permit Number: 04-206-04370
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Waffle House #2243 (Individual/Entity) is a restaurant located in Pendleton, South Carolina. The Department conducted inspections on June 5, 2017, January 29, 2018, and

October 16, 2018. The Individual/Entity has 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.

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 2018-206-06-160
Order Date:	February 12, 2019
Individual/Entity:	**River City Café**
Facility:	River City Café
Location:	208 93rd Avenue North Myrtle Beach, SC 29572
Mailing Address:	2504 South Kings Highway Myrtle Beach, SC 29577
County:	Horry
Previous Orders:	2016-206-06-040 ($800.00)
Permit Number:	26-206-07455
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: River City Café (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on December 29, 2017, May 17, 2018, and November 6, 2018. The Individual/Entity has 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 dollars **($1,000.00)**.

102)

Order Type and Number:	Consent Order 2018-206-06-161
Order Date:	February 12, 2019
Individual/Entity:	**Fat Harold's Beach Club**
Facility:	Fat Harold's Beach Club
Location:	212 Main Street North Myrtle Beach, SC 29582
Mailing Address:	Same
County:	Horry
Previous Orders:	None
Permit Number:	26-206-04085
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Fat Harold's Beach Club (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on April 10, 2017, February 23, 2018, and November 2, 2018. The Individual/Entity has 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.

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 2018-206-07-081
	Order Date:	February 12, 2019
	Individual/Entity:	**Pringletown Quick Stop**
	Facility:	Pringletown Quick Stop
	Location:	1088 Old Gilliard Road Ridgeville, SC 29472
	Mailing Address:	P.O. Box 264 Ridgeville, SC 29472
	County:	Berkeley
	Previous Orders:	None
	Permit Number:	08-206-09093
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Pringletown Quick Stop (Individual/Entity) is a restaurant located in Ridgeville, South Carolina. The Department conducted inspections on February 6, 2018, June 19, 2018, November 7, 2018, November 16, 2018, and November 27, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor and failed to provide a test kit or other device that accurately measures the concentration of MG/L of sanitizing solutions.

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 six hundred dollars **($600.00)**.

104)	Order Type and Number:	Consent Order 2019-206-04-002
	Order Date:	February 12, 2019
	Individual/Entity:	**Shoney's**
	Facility:	Shoney's
	Location:	905 South 5th Street Hartsville, SC 29550
	Mailing Address:	P.O. Box 1625 Sumter, SC 29550
	County:	Darlington
	Previous Orders:	2015-206-04-010 ($800.00)
	Permit Number:	16-206-01333
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Shoney's (Individual/Entity) is a restaurant located in Hartsville, South Carolina. The Department conducted inspections on December 8, 2016, November 14, 2017, October 30, 2018, and November 9, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that a person in charge is certified by a food protection manager certification program that is recognized by the Conference for Food Protection.

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 four hundred dollars **($400.00)**.

105) Order Type and Number: Consent Order 2018-206-03-174
Order Date: February 21, 2019
Individual/Entity: **Panchito's Mexican Grill**
Facility: Panchito's Mexican Grill
Location: 3695 Foothills Way
Fort Mill, SC 29708
Mailing Address: Same
County: York
Previous Orders: None
Permit Number: 46-206-04032
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Panchito's Mexican Grill (Individual/Entity) is a restaurant located in Fort Mill, South Carolina. The Department conducted inspections on June 26, 2018, August 21, 2018, October 17, 2018, and December 12, 2018. The Individual/Entity has 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 and failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor.

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)**.

106) Order Type and Number: Consent Order 2018-206-06-150
Order Date: February 21, 2019
Individual/Entity: **Kingstree IGA Deli #75**
Facility: Kingstree IGA Deli #75
Location: 522 East Main Street
Kingstree, SC 29556
Mailing Address: P.O. Box 1629
Lake City, SC 29560
County: Williamsburg
Previous Orders: 2017-206-06-102 ($800.00);
2018-206-06-107 ($800.00)
Permit Number: 45-206-00434
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Kingstree IGA Deli #75 (Individual/Entity) is a deli located in Kingstree, South Carolina. The Department conducted inspections on March 20, 2018, August 28, 2018, and November 6, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure written procedures were in place and made available to the Department when the facility uses time as a public health control.

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)**.

107) Order Type and Number: Consent Order 2018-206-06-151
Order Date: February 21, 2019
Individual/Entity: **El Rinconcito Salvadoreno**
Facility: El Rinconcito Salvadoreno
Location: 4019 Highway 17 South
North Myrtle Beach, SC 29582
Mailing Address: Same
County: Horry
Previous Orders: 2016-206-06-122 ($1,200.00)
Permit Number: 26-206-12760
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: El Rinconcito Salvadoreno (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on January 18, 2018, June 4, 2018, and October 23, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

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 2018-206-06-154
Order Date: February 21, 2019
Individual/Entity: **Citgo of Andrews**
Facility: Citgo of Andrews
Location: 4833 County Line Road
Andrews, SC 29510
Mailing Address: 1099 West Main Street
Andrews, SC 29510
County: Williamsburg
Previous Orders: None
Permit Number: 45-206-00317
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Citgo of Andrews (Individual/Entity) is a convenience store located in Andrews, South Carolina. The Department conducted inspections on January 23, 2018, November 19, 2018, and November 29, 2018. The Individual/Entity has 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 2018-206-07-079
Order Date: February 21, 2019
Individual/Entity: **Tobo Sushi**
Facility: Tobo Sushi
Location: 1150 Queensborough Boulevard
Mount Pleasant, SC 29464
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-10564
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Tobo Sushi (Individual/Entity) is a restaurant located in Mount Pleasant, South Carolina. The Department conducted inspections on December 12, 2017, December 21, 2017, and December 6, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to comply with the HACCP plan and procedures that are submitted and approved as a basis for the modification or waiver and failed to maintain and provide to the Department, upon request, records that demonstrate the HACCP plan is being employed.

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 2019-206-01-003
Order Date: February 21, 2019
Individual/Entity: **Santa Fe Mexican Grill**
Facility: Santa Fe Mexican Grill
Location: 248 Birchtree Drive
Greenwood, SC 29649
Mailing Address: Same
County: Greenwood
Previous Orders: None
Permit Number: 24-206-01407
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Santa Fe Mexican Grill (Individual/Entity) is a restaurant located in Greenwood, South Carolina. The Department conducted inspections on July 25, 2018, July 27, 2018, July 30, 2018, and July 31, 2018. The Individual/Entity has 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 properly cool cooked 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, six hundred dollars **($1,600.00)**.

111) Order Type and Number: Consent Order 2019-206-02-004
Order Date: February 21, 2019
Individual/Entity: **Kilpatrick's Public House**
Facility: Kilpatrick's Public House
Location: 221 North Main Street
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: None
Permit Number: 23-206-11088
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Kilpatrick's Public House (Individual/Entity) is a restaurant located in Greenville, South Carolina. The Department conducted inspections on March 9, 2017, March 16, 2017, January 11, 2018, and November 30, 2018. The Individual/Entity has 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.

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)**.

112) Order Type and Number: Consent Order 2019-206-02-007
Order Date: February 21, 2019
Individual/Entity: **K & S Seafood**
Facility: K & S Seafood
Location: 2706 Cannons Campground Road
Spartanburg, SC 29307
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit Number: N/A
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: K & S Seafood (Individual/Entity) operates a restaurant located in Spartanburg, South Carolina. The Department conducted inspections on January 4, 2019 and January 18, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: provided food to the public without a valid permit issued by 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 one thousand, six hundred dollars **($1,600.00)**.

113) Order Type and Number: Consent Order 2019-206-03-002
Order Date: February 21, 2019
Individual/Entity: **Harris Teeter Deli/Bakery**
Facility: Harris Teeter Deli/Bakery
Location: 500 Mercantile Place
Fort Mill, SC 29715

Mailing Address: P.O. Box 10100
Matthews, NC 28106
County: York
Previous Orders: None
Permit Number: 46-206-03273
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Harris Teeter Deli/Bakery (Individual/Entity) is a deli/bakery located in Fort Mill, South Carolina. The Department conducted inspections on February 1, 2017, January 8, 2018, and November 26, 2018. The Individual/Entity has 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)**.

114) Order Type and Number: Consent Order 2019-206-03-004
Order Date: February 21, 2019
Individual/Entity: **Fusion**
Facility: Fusion
Location: 1266 Wilson Road
Newberry, SC 29108
Mailing Address: Same
County: Newberry
Previous Orders: None
Permit Number: 36-206-01225
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Fusion (Individual/Entity) is a restaurant located in Newberry, South Carolina. The Department conducted inspections on November 29, 2016, January 19, 2017, January 16, 2018, January 23, 2018, and January 8, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other 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 one thousand, two hundred dollars **($1,200.00)**.

115) Order Type and Number: Consent Order 2019-206-03-009
Order Date: February 21, 2019
Individual/Entity: **Bamboo House**
Facility: Bamboo House
Location: 1320 Bush River Road
Columbia, SC 29210
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: 32-206-06581

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

Summary: Bamboo House (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on September 25, 2017, July 11, 2018, and January 25, 2019. The Individual/Entity has 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)**.

116) Order Type and Number: Consent Order 2019-206-04-003
Order Date: February 21, 2019
Individual/Entity: **Sonic Drive In**
Facility: Sonic Drive In
Location: 328 North 5th Street
Hartsville, SC 29550
Mailing Address: Same
County: Darlington
Previous Orders: None
Permit Number: 16-206-01819
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Sonic Drive In (Individual/Entity) is a restaurant located in Hartsville, South Carolina. The Department conducted inspections on September 12, 2017, September 10, 2018, and September 24, 2018. The Individual/Entity has 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)**.

117) Order Type and Number: Consent Order 2019-206-04-004
Order Date: February 21, 2019
Individual/Entity: **China Town Buffet**
Facility: China Town Buffet
Location: 540 Chesterfield Highway
Cheraw, SC 29520
Mailing Address: Same
County: Chesterfield
Previous Orders: None
Permit Number: 13-206-01242
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: China Town Buffet (Individual/Entity) is a restaurant located in Cheraw, South Carolina. The Department conducted inspections on March 7, 2017, February 21, 2018, and November 28, 2018. The Individual/Entity has 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)**.

118) Order Type and Number: Consent Order 2019-206-07-003
Order Date: February 21, 2019
Individual/Entity: **The Junction Kitchen & Provisions**
Facility: The Junction Kitchen & Provisions
Location: 4438 Spruill Avenue
North Charleston, SC 29405
Mailing Address: Same
County: Charleston
Previous Orders: 2018-206-07-018 ($1,600.00)
Permit Number: 10-206-09427
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: The Junction Kitchen & Provisions (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on September 22, 2017, May 8, 2018, December 18, 2018, and December 27, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests; failed to ensure the premises are free of litter and items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

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 two thousand, two hundred fifty dollars **($2,250.00)**.

119) Order Type and Number: Consent Order 2018-206-01-056
Order Date: March 1, 2019
Individual/Entity: **El Titanic American & Mexican**
Facility: El Titanic American & Mexican
Location: 605 South Main Street
Belton, SC 29627
Mailing Address: Same
County: Anderson
Previous Orders: 2017-206-01-003 ($800.00);
2018-206-01-001 ($2,000.00)
Permit Number: 04-206-02961
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: El Titanic American & Mexican (Individual/Entity) is a restaurant located in Belton, South Carolina. The Department conducted an inspection on December 5, 2018. The Individual/Entity has 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 dollars **($1,000.00)**.

120) Order Type and Number: Consent Order 2018-206-03-160
Order Date: March 1, 2019
Individual/Entity: **Luce Italian Cucina**
Facility: Luce Italian Cucina
Location: 1812 Augusta Highway
Lexington, SC 29072
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: 32-206-05579
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Luce Italian Cucina (Individual/Entity) is a restaurant located in Lexington, South Carolina. The Department conducted inspections on March 7, 2017, September 22, 2017, September 25, 2017, July 18, 2018, July 19, 2018, July 20, 2018, July 23, 2018, August 2, 2018, and August 3, 2018. The Individual/Entity has 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 clean the physical facilities as often as necessary to keep them clean; failed to use effective methods to cool cooked time/temperature control for safety foods; and failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris,

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 thousand dollars **($5,000.00)**.

121) Order Type and Number: Consent Order 2019-206-01-002
Order Date: March 1, 2019
Individual/Entity: **Joanna Grill**
Facility: Joanna Grill
Location: 110 North Main Street
Joanna, SC 29351
Mailing Address: Same
County: Laurens
Previous Orders: None
Permit Number: 30-206-01507
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Joanna Grill (Individual/Entity) is a restaurant located in Joanna, South Carolina. The Department conducted inspections on August 9, 2017, August 17, 2017, May 22, 2018, and August 2, 2018. The Individual/Entity has 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, six hundred dollars **($1,600.00)**.

122) Order Type and Number: Consent Order 2019-206-02-006
Order Date: March 1, 2019
Individual/Entity: **Yolk Asian Kitchen**
Facility: Yolk Asian Kitchen
Location: 906 Tiger Boulevard, #3
Clemson, SC 29631
Mailing Address: Same
County: Pickens
Previous Orders: None
Permit Number: 39-206-01839
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Yolk Asian Kitchen (Individual/Entity) is a restaurant located in Clemson, South Carolina. The Department conducted inspections on February 3, 2017, January 24, 2018, and January 3, 2019. The Individual/Entity has 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.

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)**.

123) Order Type and Number: Consent Order 2019-206-03-006
Order Date: March 1, 2019
Individual/Entity: **Flaming Grill Supreme Buffet**
Facility: Flaming Grill Supreme Buffet
Location: 115 Afton Court
Columbia, SC 29212
Mailing Address: Same
County: Lexington
Previous Orders: 2016-206-03-040 ($1,200.00);
2017-206-03-101 ($1,200.00);
2017-206-03-110 ($800.00);
2018-206-03-137 ($2,000.00)
Permit Number: 32-206-06518
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Flaming Grill Supreme Buffet (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on July 30, 2018, August 8, 2018, August 13, 2018, and January 7, 2019. The Individual/Entity has 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 properly cool cooked time/temperature control for safety foods, and failed to clean ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment

at a frequency specified by the manufacturer, or at a frequency necessary to preclude accumulation of soil or mold.

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 fifty dollars **($1,250.00)**.

124) Order Type and Number: Consent Order 2019-206-03-007
Order Date: March 1, 2019
Individual/Entity: **Arby's #891**
Facility: Arby's #891
Location: 1939 Broad River Road
Columbia, SC 29210
Mailing Address: 1155 Perimeter Center West, 5th Floor
Atlanta, GA 30338
County: Richland
Previous Orders: None
Permit Number: 40-206-07631
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Arby's #891 (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on March 5, 2018, January 18, 2019, and January 28, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that outer openings of the retail food establishment were protected against the entry of insects and rodents by filling or closing the holes and other gaps along floors, walls, ceilings, closed tight-fitting windows, and solid, self-closing doors.

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 two hundred dollars **($200.00)**.

125) Order Type and Number: Consent Order 2019-206-03-011
Order Date: March 1, 2019
Individual/Entity: **Monterrey Mexican Restaurant**
Facility: Monterrey Mexican Restaurant
Location: 931 Senate Street, Suite B
Columbia, SC 29201
Mailing Address: Same
County: Richland
Previous Orders: None
Permit Number: 40-206-05600
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Monterrey Mexican Restaurant (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on March 13, 2017, February 27, 2018, and February 4, 2019. The Individual/Entity has 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.

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)**.

126) Order Type and Number: Consent Order 2019-206-06-003
Order Date: March 1, 2019
Individual/Entity: **Ultimate California Pizza**
Facility: Ultimate California Pizza
Location: 1502 Highway 17 North
Surfside Beach, SC 29575
Mailing Address: 2504 South Kings Highway
Myrtle Beach, SC 29577
County: Horry
Previous Orders: 2017-206-06-086 ($800.00)
Permit Number: 26-206-07353
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Ultimate California Pizza (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on April 17, 2018, August 29, 2018, and December 31, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clean ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment at a frequency specified by the manufacturer, or at a frequency necessary to preclude accumulation of soil or mold.

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 two hundred dollars **($200.00)**.

127) Order Type and Number: Consent Order 2019-206-06-004
Order Date: March 1, 2019
Individual/Entity: **Hardees #1500863**
Facility: Hardees #1500863
Location: 10 US Highway 17 North
Surfside Beach, SC 29575
Mailing Address: 20377 SW Acacia Street, Suite 200
Newport Beach, CA 92660
County: Horry
Previous Orders: 2016-206-06-127 ($800.00);
2018-206-06-038 ($800.00)
Permit Number: 26-206-13072
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hardees #1500863 (Individual/Entity) is a restaurant located in Surfside Beach, South Carolina. The Department conducted inspections on April 4, 2018, October 4, 2018, and December 31, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the premises free of insects, rodents, and other pests and failed to clean the physical facilities as often as necessary to keep them clean.

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 four hundred dollars **($400.00)**.

128)	Order Type and Number:	Consent Order 2019-206-06-012
	Order Date:	March 1, 2019
	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:	2015-206-06-097 ($800.00); 2017-206-06-023 ($800.00); 2017-206-06-050 ($1,600.00); 2017-206-06-052 ($1,250.00); 2018-206-06-142 ($1,250.00)
	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 April 26, 2018, October 3, 2018, and January 15, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor and failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 two hundred fifty dollars **($250.00)**.

129)	Order Type and Number:	Consent Order 2019-206-06-015
	Order Date:	March 1, 2019
	Individual/Entity:	**Vietnam House**
	Facility:	Vietnam House
	Location:	619 Broadway Street Myrtle Beach, SC 29577
	Mailing Address:	Same
	County:	Horry
	Previous Orders:	None
	Permit Number:	26-206-12905
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Vietnam House (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 13, 2017, November 21, 2017, March 20, 2018, March 28, 2018, and January 23, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that the handwashing sinks were

accessible at all times; failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor; and 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.

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 two thousand dollars **($2,000.00)**.

130) Order Type and Number: Consent Order 2019-206-06-017
Order Date: March 1, 2019
Individual/Entity: **Dagwood's**
Facility: Dagwood's
Location: 400 11th Avenue North
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-07723
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Dagwood's (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on March 14, 2017, February 12, 2018, and January 14, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that equipment is maintained in a state of repair and condition that meets the regulation requirements.

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 two hundred dollars **($200.00)**.

131) Order Type and Number: Consent Order 2019-206-06-018
Order Date: March 1, 2019
Individual/Entity: **Landmark Gazebo Restaurant**
Facility: Landmark Gazebo Restaurant
Location: 1501 South Ocean Boulevard
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: 2017-206-06-123 ($800.00);
2019-206-06-002 ($800.00)
Permit Number: 26-206-06766
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Landmark Gazebo Restaurant (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 5, 2018, November 7, 2018, and January 22, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 two hundred dollars **($200.00)**.

132) Order Type and Number: Consent Order 2019-206-07-002
Order Date: March 1, 2019
Individual/Entity: **Arby's #6819**
Facility: Arby's #6819
Location: 514 North Highway 52
Moncks Corner, SC 29461
Mailing Address: 1155 Perimeter Center West
Atlanta, GA 30338
County: Berkeley
Previous Orders: None
Permit Number: 08-206-01042
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Arby's #6819 (Individual/Entity) is a restaurant located in Moncks Corner, South Carolina. The Department conducted inspections on December 1, 2016, November 28, 2017, September 5, 2018, and November 6, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that outer openings of the retail food establishment were protected against the entry of insects and rodents by filling or closing the holes and other gaps along floors, walls, ceilings, closed tight-fitting windows, and solid, self-closing doors.

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 four hundred dollars **($400.00)**.

133) Order Type and Number: Consent Order 2019-206-07-005
Order Date: March 1, 2019
Individual/Entity: **Wyndham Garden Hotel**
Facility: Wyndham Garden Hotel
Location: 1330 Stuart Engals Boulevard
Mount Pleasant, SC 29462
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-09335
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wyndham Garden Hotel (Individual/Entity) is a restaurant located in Mount Pleasant, South Carolina. The Department conducted inspections on January 25, 2018, February 1, 2018, and December 31, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

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)**.

134) Order Type and Number: Consent Order 2019-206-07-008
Order Date: March 1, 2019
Individual/Entity: **39 Rue De Jean**
Facility: 39 Rue De Jean
Location: 39 John Street
Charleston, SC 29403
Mailing Address: Same
County: Charleston
Previous Orders: 2016-206-07-008 ($1,200.00)
Permit Number: 10-206-03753
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: 39 Rue De Jean (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on February 9, 2017, January 17, 2018, and January 17, 2019. The Individual/Entity has 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 use effective methods to cool cooked 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 dollars **($1,000.00)**.

135) Order Type and Number: Consent Order 2019-206-07-010
Order Date: March 1, 2019
Individual/Entity: **Spring Rolls Asian Cuisine**
Facility: Spring Rolls Asian Cuisine
Location: 375 King Street
Charleston, SC 29401
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-07735
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Spring Rolls Asian Cuisine (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on January 31, 2017, January 2, 2018, and January 2, 2019. The Individual/Entity has 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.

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)**.

136) Order Type and Number: Consent Order 2019-206-07-012
Order Date: March 1, 2019
Individual/Entity: **Wei Mei Asian Diner**
Facility: Wei Mei Asian Diner
Location: 7620 Rivers Avenue, Suite 385
North Charleston, SC 29406
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-09138
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wei Mei Asian Diner (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on July 28, 2017, May 31, 2018, and January 15, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clean the physical facilities as often as necessary to keep them clean.

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 two hundred dollars **($200.00)**.

137) Order Type and Number: Consent Order 2019-211-07-001
Order Date: March 1, 2019
Individual/Entity: **Charlie Brown Seafood**
Facility: Charlie Brown Seafood
Location: 4726 Rivers Avenue
North Charleston, SC 29405
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-211-03792
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Charlie Brown Seafood (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on August 9, 2018, August 16, 2018, and January 16, 2019. The Individual/Entity has 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)**.

138) Order Type and Number: Consent Order 2018-206-07-011
Order Date: March 4, 2019
Individual/Entity: **Persimmon Café**
Facility: Persimmon Café

Location: 226 Calhoun Street
Charleston, SC 29403
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-08617
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Persimmon Café (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on February 2, 2017, January 16, 2018, and January 8, 2019. The Individual/Entity has 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.

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)**.

139) Order Type and Number: Consent Order 2019-206-03-008
Order Date: March 4, 2019
Individual/Entity: **Hamm's Hawg Heaven**
Facility: Hamm's Hawg Heaven
Location: 11375 CR Koon Highway
Newberry, SC 29127
Mailing Address: Same
County: Newberry
Previous Orders: 2015-206-03-055 ($800.00);
2016-206-03-021 ($600.00);
2017-206-03-101 ($1,000.00);
2018-206-03-035 ($800.00)
Permit Number: 36-206-01008
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hamm's Hawg Heaven (Individual/Entity) is a restaurant located in Newberry, South Carolina. The Department conducted an inspection on January 4, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly cool cooked 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 dollars **($1,000.00)**.

140) Order Type and Number: Consent Order 2019-206-06-010
Order Date: March 4, 2019
Individual/Entity: **Cici's Pizza**
Facility: Cici's Pizza
Location: 3533 Northgate Road
Myrtle Beach, SC 29588
Mailing Address: 430 Ramsey Street, Suite 106

	Fayetteville, NC 28302
County:	Horry
Previous Orders:	2017-206-06-128 ($800.00); 2018-206-06-061 ($1,250.00)
Permit Number:	26-206-10030
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Cici's Pizza (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted an inspection on January 7, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to use effective methods to cool cooked 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 dollars **($500.00)**.

141)

Order Type and Number:	Consent Order 2019-206-06-020
Order Date:	March 4, 2019
Individual/Entity:	**Fairfield Inn Broadway**
Facility:	Fairfield Inn Broadway
Location:	3150 Oleander Drive Myrtle Beach, SC 29577
Mailing Address:	Same
County:	Horry
Previous Orders:	None
Permit Number:	26-206-12450
Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Fairfield Inn Broadway (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on March 14, 2017, February 5, 2018, and January 25, 2019. The Individual/Entity has 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)**.

142)

Order Type and Number:	Consent Order 2019-206-07-006
Order Date:	March 4, 2019
Individual/Entity:	**Mr. K's Summerville**
Facility:	Mr. K's Summerville
Location:	404 North Cedar Street Summerville, SC 29483
Mailing Address:	P.O. Box 40009 Charleston, SC 29423
County:	Dorchester
Previous Orders:	None
Permit Number:	18-206-00003

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

Summary: Mr. K's Summerville (Individual/Entity) is a restaurant located in Summerville, South Carolina. The Department conducted inspections on March 21, 2017, March 31, 2017, March 1, 2018, and January 10, 2019. The Individual/Entity has 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, six hundred dollars **($1,600.00)**.

143) Order Type and Number: Consent Order 2019-206-07-014
Order Date: March 4, 2019
Individual/Entity: **New York Pizza**
Facility: New York Pizza
Location: 3363 Rivers Avenue
Charleston, SC 29405
Mailing Address: Same
County: Charleston
Previous Orders: None
Permit Number: 10-206-10437
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: New York Pizza (Individual/Entity) is a restaurant located in Charleston, South Carolina. The Department conducted inspections on February 7, 2017, January 8, 2018, and January 8, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the physical facilities in good repair; failed to provide individual disposable towels at each hand washing sink or group of adjacent handwashing sinks; and 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.

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 dollars **($1,000.00)**.

144) Order Type and Number: Consent Order 2019-206-07-016
Order Date: March 4, 2019
Individual/Entity: **Earth Fare #200 Deli**
Facility: Earth Fare #200 Deli
Location: 74 Folly Road
Charleston, SC 29407
Mailing Address: 220 Continuum Drive
Fletcher, NC 28732
County: Charleston
Previous Orders: 2018-206-07-008 ($1,600.00)
Permit Number: 10-206-02693
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Earth Fare #200 Deli (Individual/Entity) operates a deli located in Charleston, South Carolina. The Department conducted an inspection on January 31, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly cool cooked time/temperature control for safety foods 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 dollars **($1,000.00)**.

145) Order Type and Number: Consent Order 2019-206-06-019
Order Date: March 6, 2019
Individual/Entity: **Putters Pub**
Facility: Putters Pub
Location: 5183 Barefoot Resort Bridge Road
North Myrtle Beach, SC 29582
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12198
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Putters Pub (Individual/Entity) is a restaurant located in North Myrtle Beach, South Carolina. The Department conducted inspections on January 30, 2018, July 6, 2018, July 16, 2018, and January 16, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

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)**.

146) Order Type and Number: Consent Order 2018-206-06-165
Order Date: March 7, 2019
Individual/Entity: **Carver's Bay Convenience Store**
Facility: Carver's Bay Convenience Store
Location: 13017 Choppee Road
Hemingway, SC 29440
Mailing Address: Same
County: Georgetown
Previous Orders: 2018-206-06-059 ($400.00)
Permit Number: 22-206-06242
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Carver's Bay Convenience Store (Individual/Entity) is a convenience store located in Hemingway, South Carolina. The Department conducted inspections on November 9, 2017, May 31, 2018, and December 11, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris.

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 four hundred dollars **($400.00)**.

147) Order Type and Number: Consent Order 2019-206-04-005
Order Date: March 7, 2019
Individual/Entity: **Corner Connection**
Facility: Corner Connection
Location: 101 Society Hill Road
Darlington, SC 29532
Mailing Address: 119 North Spain Road
Darlington, SC 29532
County: Darlington
Previous Orders: None
Permit Number: 16-206-01943
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Corner Connection (Individual/Entity) is a convenience store located in Darlington, South Carolina. The Department conducted inspections on July 17, 2017, July 17, 2018, December 10, 2018, and December 20, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris and failed to clean the physical facilities as often as necessary to keep them clean.

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 four hundred dollars **($400.00)**.

148) Order Type and Number: Consent Order 2019-206-03-010
Order Date: March 8, 2019
Individual/Entity: **Wild Wing Café**
Facility: Wild Wing Café
Location: 1150 Bower Parkway
Columbia, SC 29212
Mailing Address: 202 Coleman Boulevard
Mount Pleasant, SC 29464
County: Lexington
Previous Orders: 2018-206-03-132 ($2,400.00)
Permit Number: 32-206-05975
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wild Wing Café (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on August 21, 2018, January 23, 2019, and January 31, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain proper hot 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)**.

149) Order Type and Number: Consent Order 2019-206-06-014
Order Date: March 12, 2019
Individual/Entity: **Wendy's #213**
Facility: Wendy's #213
Location: 2625 Dick Pond Road
Myrtle Beach, SC 29588
Mailing Address: 8040 Arrowridge Boulevard, Suite 100
Charlotte, NC 28273
County: Horry
Previous Orders: 2016-206-06-053 ($800.00);
2018-206-06-115 ($800.00)
Permit Number: 26-206-07460
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Wendy's #213 (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on February 12, 2018, August 27, 2018, and January 3, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure written procedures were in place and made available to the Department when the facility uses time as a public health control and failed to store poisonous or toxic materials so that they cannot contaminate food equipment, utensils, linens, and single-service and single-use articles.

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 dollars **($1,000.00)**.

150) Order Type and Number: Consent Order 2019-206-07-015
Order Date: March 12, 2019
Individual/Entity: **Golden Corral #2599**
Facility: Golden Corral #2599
Location: 4698 Centre Point Drive
North Charleston, SC 29418
Mailing Address: 1453 Kempsville Road, Suite 107
Virginia Beach, VA 23464
County: Charleston
Previous Orders: 2016-206-07-053 ($950.00);
2017-206-07-011 ($1,200.00)
Permit Number: 10-206-06888
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Golden Corral #2599 (Individual/Entity) is a restaurant located in North Charleston, South Carolina. The Department conducted inspections on May 4, 2017, February 12, 2018, and January 17, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to properly cool cooked 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)**.

151) Order Type and Number: Consent Order 2018-206-06-157
Order Date: March 13, 2019
Individual/Entity: **Hungry Howies Pizza and Subs**
Facility: Hungry Howies Pizza and Subs
Location: 1601 South Kings Highway
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-09594
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hungry Howies Pizza and Subs (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on July 27, 2017, January 11, 2018, and December 4, 2018. The Individual/Entity has 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)**.

152) Order Type and Number: Consent Order 2019-206-06-006
Order Date: March 13, 2019
Individual/Entity: **Vinny's Café**
Facility: Vinny's Café
Location: 804 Inlet Square Drive, Unit H
Murrells Inlet, SC 29576
Mailing Address: 5512 Green Bay Circle
Myrtle Beach, SC 29588
County: Horry
Previous Orders: None
Permit Number: 26-206-13263
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Vinny's Café (Individual/Entity) is a restaurant located in Murrells Inlet, South Carolina. The Department conducted inspections on October 11, 2017, April 11, 2018, December 13, 2018, and January 15, 2019. The Individual/Entity has 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, six hundred dollars **($1,600.00)**.

153) Order Type and Number: Consent Order 2019-206-01-001
Order Date: March 18, 2019
Individual/Entity: **Pizza Buffet**
Facility: Pizza Buffet
Location: 3420 Clemson Boulevard
Anderson, SC 29621
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit Number: 04-206-02096
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Pizza Buffet (Individual/Entity) is a restaurant located in Anderson, South Carolina. The Department conducted inspections on January 19, 2018, November 2, 2018, November 9, 2018, November 19, 2018, November 29, 2018, and December 28, 2018. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that equipment is maintained in a state of repair and condition that meets the regulation requirements; failed to frequently clean the warewashing machine, the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, raw foods, or laundering wiping cloths, and drainboards; failed to keep food contact surfaces, nonfood contact surfaces, and utensils clean and free of accumulation of dust, dirt, food residue, and other debris; failed to ensure the plumbing system is repaired according to law; and maintained in good repair; and failed to ensure that intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials and if vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

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, four hundred dollars **($1,400.00)**.

154) Order Type and Number: Consent Order 2019-206-01-005
Order Date: March 18, 2019
Individual/Entity: **Village Baker**
Facility: Village Baker
Location: 108 East Main Street
Pendleton, SC 29670
Mailing Address: Same
County: Anderson
Previous Orders: None
Permit Number: 04-206-04167
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Village Baker (Individual/Entity) is a restaurant located in Pendleton, South Carolina. The Department conducted inspections on August 29, 2018, January 2, 2019, and January 18, 2019. The Individual/Entity has 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)**.

155) Order Type and Number: Consent Order 2019-206-06-011
Order Date: March 18, 2019
Individual/Entity: **China King Restaurant**
Facility: China King Restaurant
Location: 1011 Highway 501
Myrtle Beach, SC 29577
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12543
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: China King Restaurant (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on November 15, 2017, March 20, 2018, and January 17, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor.

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 two hundred dollars **($200.00)**.

156) Order Type and Number: Consent Order 2019-206-07-001
Order Date: March 18, 2019
Individual/Entity: **Lowes Foods #270 Deli & Sushi**
Facility: Lowes Foods #270 Deli & Sushi
Location: 10048 Dorchester Road
Summerville, SC 29485
Mailing Address: 1381 Old Mill Circle
Winston Salem, NC 27103
County: Dorchester
Previous Orders: None
Permit Number: 18-206-10937
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Lowes Foods #270 Deli & Sushi (Individual/Entity) is a deli and sushi counter located in Summerville, South Carolina. The Department conducted inspections on December 17, 2018, December 27, 2018, and December 28, 2018. The Individual/Entity has 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 provide equipment sufficient in number and capacity to maintain food temperatures for cooling and heating food and holding cold and hot 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)**.

157) Order Type and Number: Consent Order 2019-206-05-001
Order Date: March 20, 2019
Individual/Entity: **Variety Restaurant**
Facility: Variety Restaurant
Location: 921 York Street
Aiken, SC 29801
Mailing Address: Same
County: Aiken
Previous Orders: 2018-206-05-015 ($1,000.00)
Permit Number: 02-206-00156
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Variety Restaurant (Individual/Entity) is a restaurant located in Aiken, South Carolina. The Department conducted an inspection on February 5, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure there was no bare hand contact with ready-to-eat 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 dollars **($1,000.00)**.

158) Order Type and Number: Consent Order 2019-206-06-016
Order Date: March 20, 2019
Individual/Entity: **Pop Pop's Pit BBQ**
Facility: Pop Pop's Pit BBQ
Location: 8724 Highway 707
Myrtle Beach, SC 29588
Mailing Address: Same
County: Horry
Previous Orders: 2017-206-06-021 ($800.00)
Permit Number: 26-206-12851
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Pop Pop's Pit BBQ (Individual/Entity) is a restaurant located in Myrtle Beach, South Carolina. The Department conducted inspections on March 19, 2018, August 9, 2018, and January 8, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clean the physical facilities as often as necessary to keep them clean; failed to protect food from contamination by storing in a clean, dry location, where it is not exposed to splash, dust, or other contamination, at least 6 inches above the floor; and failed to ensure that during pauses in food preparation or dispensing, food preparation and dispensing utensils were stored in the food with their handles above the top of the 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 four hundred dollars **($400.00)**.

159) Order Type and Number: Consent Order 2019-206-07-018
Order Date: March 20, 2019
Individual/Entity: **Hidden Cove Marina**
Facility: Hidden Cove Marina
Location: 547 Reid Hill Drive
Moncks Corner, SC 29461
Mailing Address: Same
County: Berkeley
Previous Orders: None
Permit Number: 08-206-05297
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Hidden Cove Marina (Individual/Entity) is a restaurant located in Moncks Corner, South Carolina. The Department conducted inspections on February 16, 2018, January 2, 2019, and February 1, 2019. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the physical facilities in good repair.

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 two hundred dollars **($200.00)**.

160) Order Type and Number: Consent Order 2018-206-03-177
Order Date: March 21, 2019
Individual/Entity: **J Peters Grill & Bar**
Facility: J Peters Grill & Bar
Location: 2005 Beltline Boulevard
Columbia, SC 29204
Mailing Address: 4122 Clemson Boulevard, Suite 3G
Anderson, SC 29621
County: Richland
Previous Orders: None
Permit Number: 40-206-07430
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: J Peters Grill & Bar (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on January 22, 2018, August 29, 2018, and October 29, 2018. The Individual/Entity has 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)**.

161) Order Type and Number: Consent Order 2018-206-03-179
Order Date: March 21, 2019
Individual/Entity: **Persis**
Facility: Persis
Location: 1728 Bush River Road

		Columbia, SC 29210
	Mailing Address:	15018 Bridle Trace Lane Pineville, NC 28134
	County:	Lexington
	Previous Orders:	2017-206-03-009 ($1,600.00); 2018-206-03-041 ($2,500.00); 2018-206-03-166 ($1,250.00)
	Permit Number:	32-206-06495
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: Persis (Individual/Entity) is a restaurant located in Columbia, South Carolina. The Department conducted inspections on April 18, 2018, October 25, 2018, and November 15, 2018. The Individual/Entity has 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; failed to properly cool cooked time/temperature control for safety foods; failed to maintain proper holding temperatures of time/temperature control for safety foods; failed to use effective methods to cool cooked time/temperature control for safety foods; and failed to ensure that food on display was protected from contamination by the use of packaging, counter, service line, or salad bar food guards; display cases; or other effective means.

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, five hundred dollars **($1,500.00)**.

162)	Order Type and Number:	Consent Order 2019-206-01-004
	Order Date:	March 21, 2019
	Individual/Entity:	**J Peters Grill & Bar**
	Facility:	J Peters Grill & Bar
	Location:	715 Montague Avenue Greenwood, SC 29649
	Mailing Address:	Same
	County:	Greenwood
	Previous Orders:	None
	Permit Number:	24-206-02093
	Violations Cited:	S.C. Code Ann. Regs. 61-25

Summary: J Peters Grill & Bar (Individual/Entity) is a restaurant located in Greenwood, South Carolina. The Department conducted inspections on June 11, 2018, June 18, 2018, August 27, 2018, August 28, 2018, August 29, 2018, and August 30, 2018. The Individual/Entity has 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 properly cool cooked 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 two thousand, nine hundred fifty dollars **($2,950.00)**.

163) Order Type and Number: Consent Order 2019-206-02-018
Order Date: March 21, 2019
Individual/Entity: **Commerce Club**
Facility: Commerce Club
Location: 1 Liberty Square, Floor 17
Greenville, SC 29601
Mailing Address: Same
County: Greenville
Previous Orders: 2017-206-02-024 ($200.00)
Permit Number: 23-206-04217
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: Commerce Club (Individual/Entity) is a restaurant located in Greenville, South Carolina. The Department conducted inspections on April 23, 2018, February 7, 2019, and February 14, 2019. The Individual/Entity has 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.

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 dollars **($1,000.00)**.

164) Order Type and Number: Consent Order 2019-206-03-011
Order Date: March 21, 2019
Individual/Entity: **New China**
Facility: New China
Location: 205 Columbia Avenue, Suite Q
Lexington, SC 29072
Mailing Address: Same
County: Lexington
Previous Orders: None
Permit Number: 32-206-06115
Violations Cited: S.C. Code Ann. Regs. 61-25

Summary: New China (Individual/Entity) is a restaurant located in Lexington, South Carolina. The Department conducted inspections on March 14, 2017, February 22, 2018, and January 30, 2019. The Individual/Entity has 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.

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)**.

Onsite Wastewater Enforcement

165) Order Type and Number: Administrative Order 18-19-OSWW
Order Date: February 21, 2019
Individual/Entity: **Christopher Lawter and Allison Lawter**
Location: 511 Hammett Road
Wellford, SC 29385
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Christopher Lawter and Allison Lawter (Individuals/Entities) own property located in Wellford, South Carolina. The Department conducted a complaint investigation on February 9, 2018 and observed the discharge of wastewater to the surface of the ground. The Individuals/Entities have violated the South Carolina Onsite Wastewater Systems (OSWW) Regulation as follows: failed to ensure that no septic tank effluent or domestic wastewater or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individuals/Entities are required to: operate in accordance with all applicable requirements of S.C. Code Ann. Regs. 61-56; eliminate the unpermitted wastewater discharge or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system; and pay a **stipulated penalty** in the amount of five thousand dollars **($5,000.00)** should any requirement of the Order not be met.

166) Order Type and Number: Consent Order 19-02-OSWW
Order Date: March 7, 2019
Individual/Entity: **Henry M. Graves**
Facility: Graves Plumbing
Location: 1680 S. Arant Street
Pageland, SC 29728
Mailing Address: Same
County: Chesterfield
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56 S.C. Code Ann. Regs. 61-56.1

Summary: Henry M. Graves (Individual/Entity) operates as a licensed Onsite Wastewater (OSWW) system contractor located in Pageland, South Carolina. The Department received multiple pictures and video documentation of a Graves Plumbing vehicle discharging sewage to the surface of the ground at an unapproved site. The Individual/Entity has violated the South Carolina License to Construct or Clean Onsite Sewage Treatment and Disposal Systems and Self-Contained Toilets Regulation and the South Carolina Onsite Wastewater Systems Regulation as follows: septage was disposed of at facilities not approved by the Department and that the person licensed to clean onsite sewage treatment and disposal systems and self-contained toilets did not maintain accurate, written records of cleaning and transporting activities; and septic tank

effluent or domestic wastewater was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to: immediately cease and desist engaging in the business of construction, repair, or cleaning of onsite sewage treatment and disposal systems in South Carolina without a valid Department-issued license; and submit to the Department a civil penalty in the amount of one thousand dollars **($1,000.00)**.

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

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Summary Sheet
May 9, 2019

__X__ Action

____ Information

I. SUBJECT: Placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I for Controlled Substances

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

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 Chairmen 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.

On April 16, 2019, the Acting Administrator of the federal Drug Enforcement Administration issued a temporary scheduling order in the Federal Register to schedule the synthetic cannabinoids ("SCs") ethyl 2-(1-(5-fluoropentyl)-1Hindazole-3-carboxamido)-3,3- dimethylbutanoate (trivial name: 5FEDMB-PINACA); methyl 2-(1-(5- fluoropentyl)-1H-indole-3- carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); N- (adamantan-1-yl)-1-(4-fluorobenzyl)-1Hindazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-

(4-FLUOROBENZYL)); 1-(5- fluoropentyl)-N-(2-phenylpropan-2-yl)- 1H-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1H-indol-3- yl)(2,2,3,3-tetramethylcyclopropyl) methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers in schedule I. Temporary scheduling allows the federal Drug Enforcement Administration to schedule a substance more quickly in order to avoid an imminent hazard to the public safety as defined in the federal Controlled Substances Act. 21 U.S.C. § 811(h). A temporary scheduling expires after two years, except that the Attorney General may extend the temporary scheduling for up to one year during the pendency of proceedings to permanently schedule the substance. 21 U.S.C. § 811(h)(2). The federal temporary scheduling order for these five synthetic cannabinoids became effective April 16, 2019.

III. ANALYSIS:

The Acting Administrator of the Drug Enforcement Administration determined that the temporary scheduling of these SCs in schedule I of the federal Controlled Substances Act was necessary to avoid an imminent hazard to the public safety. 21 U.S.C. § 811(h). As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144. To make this determination, the Administrator was required to consider the substances' history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. § 811(c). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

a. History and Current Pattern of Abuse

SCs are substances synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol ("THC"), the main psychoactive ingredient in marijuana. SCs were introduced on the designer drug market in several European countries as "herbal incense" before the initial encounter in the United States by U.S. Customs and Border Protection ("CBP") in November 2008. As observed by the DEA and CBP, SCs originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. From 2009 to the present, misuse of SCs has increased in the United States with law enforcement encounters describing SCs applied onto plant material and in other designer drug products intended for human consumption.

b. Scope, Duration, and Significance of Abuse

According to online discussion boards and law enforcement encounters, spraying or mixing the SCs with plant material provides a vehicle for the most common route of administration—smoking (using a pipe, a water pipe, or rolling the drug-laced plant material in cigarette papers).The illicit use of SCs has continued throughout the United States, resulting in severe adverse effects, overdoses and deaths. While new SCs continue to emerge on the illicit market, some substances identified at their peak in previous years have continued to be abused by the user population. Recent hospital

reports, scientific publications, and/or law enforcement reports demonstrate that 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYLPINACA, FUB-144 and their associated designer drug products are abused for their psychoactive properties. As with many generations of SCs encountered since 2009, the abuse of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5FCUMYL-PINACA and FUB-144 are negatively impacting communities in the United States.

c. What if Any Risk to the Public

5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 have no accepted medical use in the United States. Use of 5F-MDMBPICA, 5F-EDMB-PINACA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 has been reported to result in adverse effects in humans in the United States. In addition, there have been multiple law enforcement seizures of 5F-EDMBPINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in the United States. Use of other SCs has resulted in signs of addiction and withdrawal. Based on the pharmacological similarities between 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 and other SCs, these five 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are SCs that have pharmacological effects similar to the schedule I hallucinogen THC, and other temporarily and permanently controlled schedule I SCs. In addition, the misuse of 5F-CUMYL-PINACA, 5F-EDMBPINACA and FUB-144 has been associated with multiple overdoses requiring emergency medical intervention while deaths have been reported that involved FUB-AKB48. With no approved medical use and limited safety or toxicological information, 5F-EDMB-PINACA, 5FMDMB-PICA, FUB-AKB48, 5F-CUMYLPINACA and FUB-144 have emerged in the designer drug market, and the abuse of these substances for their psychoactive properties is concerning. Because they share pharmacological similarities with schedule I substances (D9-THC, JWH-018 and other temporarily and permanently controlled schedule I SCs), 5F-EDMB-PINACA, 5FMDMB-PICA, FUB-AKB48, 5F-PINACA, and FUB-144 pose serious risks to an abuser. Tolerance to SCs may develop fairly rapidly with larger doses being required to achieve the desired effect. Acute and chronic abuse of SCs in general have been linked to adverse health effects including signs of addiction and withdrawal, numerous reports of emergency department admissions, and overall toxicity and deaths. Psychiatric case reports have been reported in the scientific literature detailing the SC abuse and associated psychoses. As abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are being encountered on the illicit drug market and have no accepted medical use in the United States. Regardless, these products continue to be easily available and abused by diverse populations.

IV. RECOMMENDATION:

The Acting Administrator of the Drug Enforcement Administration's review of these substances determined that 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 meet the criteria for temporary placement in schedule I of the federal Control Substance Act because they have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use in treatment under medical supervision, and temporary scheduling was necessary to avoid an imminent hazard to the public safety. The Department recommends placing these substances in

Schedule I in the same manner as the federal Drug Enforcement Administration. If the temporary scheduling order expires without being made permanent, the Department may recommend rescheduling pursuant to the procedure in S.C. Code Section 44-53-160(C).

Pursuant to S.C. Code Section 44-53-160(C), the Department recommends the placement of 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I for controlled substances in South Carolina and the amendment of Section 44-53-190(D) of the South Carolina Code to include:

(A) ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: 5F-EDMB-PINACA;

(B) methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: 5F-MDMB-PICA);

(C) 1N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL));

(D) 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (trivial names: 5F-CUMYL-PINACA; SGT-25); and/or

(E) (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: FUB-144)

Submitted by:

Lisa Thomson
Chief, Bureau of Drug Control

Shelly Kelly
Deputy Director for Health Regulations

Attachment:

hearings may take the form of, but are not limited to:

(i) Informal meetings in which the employee and Board representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing official interviews the employee and Board representative; or

(iii) Formal written submissions with an opportunity for oral presentation.

(4) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the formal written record, including any documentation submitted by the employee or the Board.

(5) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Decision on hearing.* Unless the employee requests and the hearing official grants a delay in the proceedings, at the earliest practicable date, but in any event no later than 60 days after the filing of the petition requesting the hearing, the hearing official will issue a written decision to the employee. The decision will state the Board's position concerning the existence and amount of the debt, facts purporting to evidence the nature and origin of the alleged debt, the hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or Board's grounds, the amount and validity of the debt as determined by the hearing official, and the repayment schedule, if not established by written agreement between the employee and the Board. If the hearing official determines that a debt may not be collected under this section, but the Board finds that the debt is still valid, the Board may still seek collection of the debt through other means, including but not limited to offset of other Federal payments.

(f) *Deductions under this section.* The method of collection under this section is salary offset from disposable pay (as defined in 5 CFR 550.1103), except as described in this paragraph. The size of installment deductions shall ordinarily bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period under this section may not exceed 15 percent of disposable pay, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (97 stat. 1195). Ordinarily, debts must be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay (or other applicable limitation as provided in this paragraph) for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (g) of this section.

(g) *Separating or separated employees.* If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset may be performed under 31 U.S.C. 3716 from subsequent payments of any nature (*e.g.* final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt. Such offset may also be performed where appropriate against later payments of any kind due the former employee from the United States if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. Nothing in this section shall affect any limitation on alienation of benefits administered by the Federal Reserve System's Office of Employee Benefits.

(h) *Non-waiver and refunds of payments.* An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary. Any amounts paid or deducted under this section will be promptly refunded when a debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation), or the employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay. Refunds do not bear interest unless required or permitted by law or contract.

§ 267.6 Interest, penalties, and administrative costs.

Except with respect to debts referenced in 31 U.S.C. 3717(g), the Board will charge interest, costs, and a six percent penalty on debts covered by this regulation in accordance with 31 CFR 901.9. The Board will not impose interest charges on the portion of the debt that is paid within 30 days after the date on which interest began to accrue, nor impose penalty charges on the portion of the debt that is paid within 90 days after the date on which penalty began to accrue. The Board will not impose any charges during periods during which collection activity has been suspended pending any review provided for in this part if the reviewing official determines that collection of such charges is against equity and good conscience or is not in the best interest of the United States. The Board may, in its discretion, also waive interest, penalties, and cost charges for good cause shown by the debtor (for example, the debtor is unable to pay any significant portion of the debt within a reasonable period of time, or collection of these charges will jeopardize collection of the principal of the debt) or otherwise as authorized in 31 CFR 901.9(g) and 902.2.

By order of the Board of Governors of the Federal Reserve System, April 11, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–07537 Filed 4–15–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–491]

Schedules of Controlled Substances: Temporary Placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic cannabinoids (SC), ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers in

schedule I. This action is based on a finding by the Acting Administrator that the placement of these SCs in schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144.

DATES: This temporary scheduling order is effective April 16, 2019, until April 16, 2021. If this order is extended or made permanent, the DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lynnette M. Wingert, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling [1] for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

[1] Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[2] The Acting Administrator transmitted notice of his intent to place 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated August 24, 2018. The Assistant Secretary responded to this notice by letter dated September 6, 2018, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no active investigational new drug applications or approved new drug applications for 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 was published in the **Federal Register** on December 28, 2018. 83 FR 67166.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Available data and information for 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144, summarized below, indicate that these synthetic cannabinoids (SCs) have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis and the Assistant Secretary's September 6, 2018 letter are available in their entirety under the tab "Supporting Documents" of the public docket of this action at *www.regulations.gov*.

Synthetic Cannabinoids

The illicit use of SCs continues to cause severe adverse effects, overdoses and deaths in the United States. SCs are substances synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana. SCs were introduced to the designer drug market in several European countries as "herbal incense" before the initial encounter in the United States by U.S. Customs and Border Protection (CBP) in November 2008. Since 2009, misuse of SCs has escalated in the United States as evidenced by large numbers of law enforcement encounters of SCs applied onto plant material and in other designer drug products intended for human consumption. Recent hospital reports, scientific publications, and/or law enforcement reports demonstrate that 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, FUB-144 and their associated designer drug products are being abused for their psychoactive properties (*see* DEA 3-Factor Analysis). As with many generations of SCs encountered since 2009, the abuse of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-

[2] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

CUMYL-PINACA and FUB-144 is negatively impacting communities in the United States.

As noted by the DEA and CBP, SCs originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. According to online discussion boards and law enforcement encounters, spraying or mixing the SCs with plant material provides a vehicle for the most common route of administration—smoking (using a pipe, a water pipe, or rolling the drug-laced plant material in cigarette papers).

5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 have no accepted medical use in the United States. Use of 5F-MDMB-PICA, 5F-EDMB-PINACA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 has been reported to result in adverse effects in humans in the United States (*see* DEA 3-Factor Analysis). In addition, there have been multiple law enforcement seizures of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in the United States. Use of other SCs has resulted in signs of addiction and withdrawal. Based on the pharmacological similarities between 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 and other SCs, these five SCs are likely to produce signs of addiction and withdrawal similar to those produced by other SCs.

5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are SCs that have pharmacological effects similar to the schedule I hallucinogen THC, and other temporarily and permanently controlled schedule I SCs. In addition, the misuse of 5F-CUMYL-PINACA, 5F-EDMB-PINACA and FUB-144 has been associated with multiple overdoses requiring emergency medical intervention (*see* DEA 3-Factor Analysis) while deaths have been reported that involved FUB-AKB48. With no approved medical use and limited safety or toxicological information, 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 have emerged in the designer drug market, and the abuse of these substances for their psychoactive properties is concerning.

Factor 4. History and Current Pattern of Abuse

SCs have been developed by researchers over the last 30 years as tools for investigating the endocannabinoid system (*e.g.,* determining CB1 and CB2 receptor activity). The first encounter of SCs intended for illicit use within the United States occurred in November 2008 by CBP. Since then, the popularity of SCs as product adulterants and objects of abuse has increased as evidenced by law enforcement seizures, public health information, and media reports.

Numerous SCs have been identified as product adulterants, and law enforcement has seized bulk amounts of these substances. As successive generations of SCs have been identified and controlled as schedule I substances, illicit distributors have developed new SC substances that vary only by slight modifications to their chemical structure while retaining pharmacological effects related to their abuse potential. These substances, and products laced with these substances, are marketed under the guise of "herbal incense" and promoted as a "legal high" with a disclaimer that they are "not for human consumption." Thus, after section 1152 of the Food and Drug Administration Safety and Innovation Act (FDASIA), Public Law 112–144, placed cannabimimetic agents and 26 specific substances (15 of these are SCs) into schedule I, law enforcement documented the emergence of new SCs including UR-144, XLR11, AKB48, PB-22, 5F-PB-22, AB-FUBINACA, and ADB-PINACA. After these substances were temporarily scheduled (78 FR 28735, May 16, 2013; 79 FR 7577, February 10, 2014) other generations of SCs appeared and were temporarily controlled, including AB-CHMINACA, AB-PINACA, THJ-2201 (80 FR 5042, January 30, 2015), MAB-CHMINACA (81 FR 6171, February 5, 2016), 5F-ADB, 5F-AMB, 5F-ABK48, ADB-FUBINACA, MDMB-CHMICA, MDMB-FUBINACA (82 FR 17119, April 10, 2017), FUB-AMB (82 FR 51154, November 3, 2017) NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA (83 FR 31877, July 10, 2018).

FUB-AKB48 was first identified in seized drug evidence in October 2013, followed by FUB-144 (January 2014), 5F-MDMB-PICA (October 2016), 5F-EDMB-PINACA (October 2017) and 5F-CUMYL-PINACA (February 2018). Following their manufacture in China, SCs are often encountered in countries including New Zealand, Australia, and Russia before appearing throughout Europe, and eventually in the United States. 5F-CUMYL-PINACA was first reported in the German and Swiss illicit drug markets in 2015 but didn't show up in the United States until February 2018; 5F-EDMB-PINACA was reported in China in 2016 but didn't appear in the United States until October 2017; and 5F-MDMB-PICA was reported in Germany in August 2016 and November 2016 in Belgium, a few months before showing up in the United States. These data further support that based upon trends, SCs appear in the illicit drug markets of other countries including those in Europe, often before being trafficked in the United States. The misuse of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 has been associated with law enforcement seizures, overdoses requiring emergency medical intervention, or both (*see* DEA 3-Factor Analysis).

The powder form of SCs is typically dissolved in solvents (*e.g.,* acetone) before being applied to plant material, or dissolved in a propellant intended for use in electronic cigarette devices. In addition, 5F-EDMB-PINACA was identified as an adulterant on pieces of paper that were smuggled into a detention facility and later found partially burned (*see* DEA 3—Factor Analysis). Law enforcement personnel have encountered various application methods including buckets or cement mixers in which plant material and one or more SCs are mixed together, or in large areas where the plant material is spread out so that a dissolved SC mixture can be applied directly. Once mixed, the SC plant material is then allowed to dry before manufacturers package the product for distribution, ignoring any control mechanisms to prevent contamination or to ensure a uniform concentration of the substance in each package. Adverse health consequences may also occur from directly ingesting the drug during the manufacturing process. The failure to adhere to any manufacturing standards with regard to amounts, the substance(s) included, purity, or contamination may increase the risk of adverse events. However, it is important to note that adherence to manufacturing standards would not eliminate their potential to produce adverse effects because the toxicity and safety profile of these SCs have not been studied.

5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144, similar to other SCs, have been found in powder form or mixed with dried leaves or herbal blends are marketed under the guise of "herbal

incense'' and promoted as ''legal high'' with disclaimer that they are ''not for human consumption.'' Presentations at emergency departments directly linked to the abuse of 5F-EDMB-PINACA and FUB-144 have included seizures, agitation, vomiting, tachycardia and elevated blood pressure (*see* DEA 3-Factor Analysis).

Factor 5. Scope, Duration and Significance of Abuse

SCs continue to be encountered in the illicit market despite scheduling actions that attempt to safeguard the public from the adverse effects and safety issues associated with these substances (*see* DEA 3-Factor Analysis). Novel substances continue to be encountered, differing only by small chemical structural modifications intended to avoid prosecution while maintaining the pharmacological effects. Law enforcement and health care professionals continue to report the abuse of these substances and their associated products.

As described by NIDA, many substances being encountered in the illicit market, specifically SCs, have been available for years but have reentered the marketplace due to a renewed popularity. The threat of serious injury to the individual and the imminent threat to public safety following the ingestion of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 and other SCs persist.

Full reports of information obtained through STARLiMS,[3] STRIDE,[4] and NFLIS [5] for the past five years may be found in the DEA 3-Factor Analysis. According to NFLIS, STARLiMS and STRIDE data, forensic laboratories have detected the following information about the SCs in question:

- 5F-EDMB-PINACA was identified in 366 different NFLIS reports from eight states, since 2017 [6] and 22 STRIDE/STARLiMS reports from two states, since 2017.
- 5F-MDMB-PICA was identified in 381 NFLIS reports from 22 states, since 2016 and 32 STRIDE/STARLiMS reports from seven states and the District of Columbia, since 2017.
- FUB-AKB48 was identified in 362 NFLIS reports from 21 states, since 2014 and 37 STRIDE/STARLiMS reports from eight states, since 2014.
- 5F-CUMYL-PINACA was identified in 54 NFLIS reports from three states, since 2018.
- FUB-144 was identified in 403 NFLIS reports from 27 states, since 2014 and 79 STARLiMS reports from 14 states plus Washington, DC, since 2014.

Factor 6. What, if Any, Risk There Is to the Public Health

Since first being identified in the United States in 2008, the ingestion of SCs continues to result in serious adverse effects. Details of these events involving 5F-CUMYL-PINACA, 5F-EDMB-PINACA, FUB-144, FUB-AKB48 and 5F-MDMB-PICA are summarized below.

1. In 2015, in London (United Kingdom), a 34-year-old male was hospitalized after ingesting a synthetic cannabinoid product. Toxicological analysis identified 5F-AKB48 and 5F-CUMYL-PINACA in biological samples.

2. In late November and early December 2015, in Jackson, Mississippi, five individuals presented at local emergency facilities following ingestion of a synthetic cannabinoid-containing product. Evidence collected from the individuals tested positive for THC, MAB-CHMINACA and FUB-144. Toxicological analysis of biological samples in all five patients identified THC, MAB-CHMINACA, and FUB-144.

3. In March 2017, in Chaves, New Mexico, a 14-year-old female was found in the bathroom of her home with seizure-like activity. Following transport to a local hospital by family members, she was pronounced dead approximately 20 minutes later. Toxicological analysis upon autopsy identified three SCs: FUB-AKB48, AB-CHMINACA, and ADB-CHMINACA (MAB-CHMINACA). The cause of death was determined to be toxic effects of synthetic cannabinoids (FUB-AKB48, AB-CHMINACA, and ADB-CHMINACA).

4. In January 2018, in Pittsburgh, Pennsylvania, 13 correctional facility workers were treated for overdose symptoms including diaphoresis, hypertension and tachycardia following ingestion of an airborne substance while conducting cell searches for contraband. In response to the overdose events, evidence retrieved from the searches tested positive for the synthetic cannabinoids 5F-ADB, 5F-EDMB-PINACA, and 4-CN-CUMYL-BUTINACA.

5. In March 2018, in Chicago, Illinois, a 22-year-old male expired at a local hospital. Toxicological analysis confirmed buprenorphine, brodifacoum, bromadiolone, FUB-AMB and FUB-AKB48 in biological samples of this decedent.

6. In April 2018, in Harrisburg, Pennsylvania, a 38-year-old male presented at a local hospital due to repeated nosebleeds, gastrointestinal bleeding with anemia and bruising on his arms. Toxicological analysis confirmed brodifacoum, FUB-AMB, and FUB-AKB48 in biological samples.

7. In April 2018, in Harrisburg, Pennsylvania, another patient presented at a local hospital due to significant bleeding and anemia requiring a transfusion. Toxicological analysis confirmed brodifacoum, FUB-AMB, and FUB-AKB48 in biological samples.

8. In June 2018, in Chicago, Illinois, a 25-year-old male expired at a local hospital. Toxicological analysis confirmed brodifacoum, bromadiolone, FUB-AMB and FUB-AKB48 in biological samples of this decedent.

9. In July 2018, in Washington, DC, in excess of 260 overdoses and four deaths were reported following use of a synthetic cannabinoid product. Analysis of drug evidence from the overdose event confirmed the presence of the synthetic cannabinoids FUB-AMB, EMB-FUBINACA and FUB-144.

10. In August 2018, in New Haven, Connecticut, in excess of 47 overdoses were reported following the use of a synthetic cannabinoid product. Analysis of drug evidence from the overdose event confirmed the presence of the synthetic cannabinoids 5F-ADB, FUB-AMB and 5F-MDMB-PICA.

11. In September 2018, law enforcement in Georgia seized multiple electronic cigarettes with various colored viscous liquids following the reports of overdoses. Laboratory analysis on the seized evidence determined the substance to be 5F-CUMYL-PINACA.

12. From September 10 to 16, 2018, in Washington, DC, at least 244 overdoses were reported following use of a synthetic cannabinoid product. Analysis of drug evidence from the overdose event confirmed the presence of the synthetic cannabinoids FUB-AMB and 5F-MDMB-PICA.

Because they share pharmacological similarities with schedule I substances (Δ^9-THC, JWH-018 and other temporarily and permanently controlled schedule I SCs), 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-

[3] STARLiMS is a laboratory information management system that systematically collects results from drug chemistry analyses conducted by DEA laboratories. On October 1, 2014, STARLiMS replaced System to Retrieve Information from Drug Evidence (STRIDE) as the DEA laboratory drug evidence data system of record.

[4] 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 some local law enforcement agencies.

[5] The National Forensic Laboratory Information System (NFLIS) is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories in the United States.

[6] At the time of query, 2018 data were still reporting.

PINACA, and FUB-144 pose serious risks to an abuser. Tolerance to SCs may develop fairly rapidly with larger doses being required to achieve the desired effect. Acute and chronic abuse of SCs in general have been linked to adverse health effects including signs of addiction and withdrawal, numerous reports of emergency department admissions, and overall toxicity and deaths. Psychiatric case reports have been reported in the scientific literature detailing the SC abuse and associated psychoses. As abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users.

5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are being encountered on the illicit drug market and have no accepted medical use in the United States. Regardless, these products continue to be easily available and abused by diverse populations.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 indicate that these SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated August 24, 2018, notified the Assistant Secretary of the DEA's intention to temporarily place 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I. A notice of intent was subsequently published in the **Federal Register** on December 28, 2018. 83 FR 67166.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Acting Administrator considered available data and information, and herein sets forth the grounds for his determination that it is necessary to temporarily schedule ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (trivial name: FUB-144) in schedule I of the CSA to avoid an imminent hazard to the public safety.

Because the Acting Administrator hereby finds it necessary to temporarily place 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling these substances is effective on the date of publication in the **Federal Register**, and is in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 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, as of April 16, 2019. Any person who currently handles 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144, and is not registered with the DEA, must submit an application for registration and may not continue to handle 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 as of April 16, 2019, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA on or after April 16, 2019 is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 must surrender all currently held quantities of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144.

3. *Security.* 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in

accordance with 21 CFR 1301.71–1301.93, as of April 16, 2019.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from April 16, 2019, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 on the effective date of this order must take an inventory of all stocks of these substances on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, 1317 and § 1307.11. Current DEA registrants authorized to handle 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304 and 1312 as of April 16, 2019.

8. *Order Forms.* All DEA registrants who distribute 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of April 16, 2019.

9. *Importation and Exportation.* All importation and exportation of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of April 16, 2019.

10. *Quota.* Only DEA registered manufacturers may manufacture 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of April 16, 2019.

11. *Liability.* Any activity involving 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA or FUB-144 not authorized by, or in violation of the CSA, occurring as of April 16, 2019, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order (as distinct from a rule) and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, which are applicable to rulemaking, do not apply to this temporary scheduling order. The specific language chosen by Congress indicates an intention for the DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for *other* kinds of scheduling actions, see section 201(a) of the CSA, 21 U.S.C. 811(a), it is noteworthy that, in section 201(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will 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. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, "any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines." 5 U.S.C. 808(2). It is in the public interest to schedule these substances immediately to avoid an imminent hazard to the public safety. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place these substances in schedule I because they pose an imminent hazard to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately

upon its publication. The DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 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 part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(37) through (41) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(37) ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: 5F-EDMB-PINACA) 7036

(38) methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: 5F-MDMB-PICA) 7041

(39) *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)) 7047

(40) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (trivial names: 5F-CUMYL-PINACA; SGT-25) 7083

(41) (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone, its optical, positional, and geometric isomers, salts and salts of isomers (trivial name: FUB-144) 7014

Dated: April 5, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–07460 Filed 4–15–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0955]

RIN 1625–AA09

Drawbridge Operation Regulations; Belle River, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard is issuing a temporary deviation to the operating schedule that regulates the State Route 70 (SR 70), pontoon bridge across the Belle River mile 23.8, near Pierre Part, Assumption Parish, Louisiana. This temporary deviation is needed to collect and analyze information on vehicle traffic congestion on SR 70 created when the drawbridge opens to vessel traffic and the impact to the reasonable needs of navigation when the bridge closes to vessels during periods of high vehicle traffic. During this temporary deviation the drawbridge will remain closed to navigation.

DATES: This deviation is effective from 6 a.m. on May 17, 2019 to 6 a.m. on August 30, 2019. Comments and related material must be received by the Coast Guard on or before September 23, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0955 using Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
LA DOTD Louisiana Department of Transportation and Development
SR State Route
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

LA DOTD has requested to change the operating requirements for the SR 70 pontoon bridge across the Belle River mile 23.8, near Pierre Part, Assumption Parish, Louisiana. This bridge currently opens on signal, except that from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hour notice is given according to 33 CFR 117.424.

LA DOTD requested changing this bridge operating schedule because vehicle traffic has become congested during June, July, and August. This waterway is heavily used by recreational vessels during the summer months.

LA DOTD conducted a field study that showed that about 80 cars were delayed approximately 15 minutes each time the bridge opened to vessel traffic and that the bridge sometimes opened as many as 4 times per hour. To alleviate this congestion LA DOTD has requested to open the bridge to vessel traffic on the hour from 6 a.m. to 10 p.m. each day.

This 105-day temporary deviation to the regulations will allow LA DOTD to collect additional vehicle traffic data to measure the impact of bridge closures on traffic congestion. It will also allow the Coast Guard to collect data on the impact of the proposed regulation change on vessels.

This bridge has a vertical clearance of zero feet in the closed to vessel traffic position and unlimited vertical clearance in the open to vessel traffic position. In June, July, and August 2017 the bridge opened for vessels 374 times. During this temporary deviation the bridge will operate as follows:

From 6 a.m. on June 1, 2019 through 6 p.m. on August 31, 2019 the draw of the SR 70 pontoon bridge across the Belle River mile 23.8, near Pierre Part, Assumption Parish, Louisiana shall open on signal on the hour from 6 a.m. to 10 p.m.; and that from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hour notice is given. The bridge will open on signal for emergencies.

The Coast Guard will inform the users of this waterway through Local and Broadcast Notice to Mariners of the

(x) ACTION/DECISION
( ) INFORMATION

Date: May 9, 2019

To: S.C. Board of Health and Environmental Control

From: Bureau of Air Quality

Re: Notice of Proposed Regulation Amending Regulation 61-62, *Air Pollution Control Regulations and Standards.*

I. Introduction

The Bureau of Air Quality ("Bureau") proposes the attached Notice of Proposed Regulation amending R.61-62, *Air Pollution Control Regulations and Standards,* for publication in the May 24, 2019, *South Carolina State Register* ("*State Register*"). Legal authority for these amendments resides in the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 et seq. ("Pollution Control Act"), which authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department promulgates these amendments for compliance with federal air pollution control laws.

II. Facts

1. Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

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 60 and 63 include revisions to 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 proposes amending R.61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards,* and R.61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, to adopt the federal amendments to these standards promulgated from January 1, 2018, through December 31, 2018.

4. The Department also proposes amending R.61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

5. The Department had a Notice of Drafting published in the February 22, 2019, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. Notice was also published on the Department's

Regulatory Information website in the *DHEC Monthly Regulation Development Update*. The Department received no public comments by the March 25, 2019, close of the public comment period.

6. Department staff conducted an internal review of the proposed amendments on March 21, 2019.

7. The Bureau held a stakeholder meeting on April 11, 2019, as part of the annual Carolinas Air Pollution Control Association meeting. Additionally, the Bureau provided the draft proposed amendments to the affected facilities subject to R.61-62.60, Subpart Cf and R.61-62.60, Subpart DDDD, for their review.

8. South Carolina industries are already subject to these national air quality standards as a matter of federal law. Thus, there will be no increased cost to the state or its political subdivisions resulting from adoption of these federal amendments. South Carolina is already reaping the environmental benefits of the amendments.

9. In accordance with S.C. Code Section 1-23-120(H)(1), 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.

III. Request for Approval

The Bureau respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the May 24, 2019, *State Register*.

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

Myra C. Reece
Director
Environmental Affairs

Attachments:
A. Notice of Proposed Regulation
B. Notice of Drafting published in the February 22, 2019, *State Register*

ATTACHMENT A

STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR REGULATION 61-62, AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

May 9, 2019

Document No. _____
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:

The Department proposes amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to adopt federal amendments to associated standards promulgated from January 1, 2018, through December 31, 2018. The Department also proposes amending R.61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, to clarify the applicability and scope of United States Environmental Protection Agency (EPA) emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

The EPA promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments to 40 CFR Parts 60 and 63 include revisions to 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.

South Carolina industries are already subject to these national air quality standards as a matter of federal law. Thus, there will be no increased cost to the state or its political subdivisions resulting from adoption of these federal amendments. South Carolina is already reaping the environmental benefits of the amendments.

The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review 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.

The Department had a Notice of Drafting published in the February 22, 2019, *State Register*.

Section-by-Section Discussion of Proposed Amendments:

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

Regulation 61-62.60, Subpart A, "General Provisions":
Subpart A, Table, is amended to incorporate federal revisions at 83 FR 56713, November 14, 2018, and 83 FR 60696, November 26, 2018, by reference.

Regulation 61-62.60, Subpart Cf, "Emission Guidelines And Compliance Times For Municipal Solid Waste Landfills":
Subpart Cf is retitled and amended to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

Regulation 61-62.60, Subpart Ja, "Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007":
Subpart Ja, Table, is amended to incorporate federal revisions at 83 FR 60696, November 26, 2018, by reference.

Regulation 61-62.60, Subpart DDDD, "Emissions Guidelines And Compliance Times For Commercial And Industrial Solid Waste Incineration Units":
Subpart DDDD is retitled and amended to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

Regulation 61-62.60, Subpart OOOOa, "Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015":
Subpart OOOOa, Table, is amended to incorporate federal revisions at 83 FR 10628, March 12, 2018, by reference.

Regulation 61-62.60, Subpart QQQQ, "Standards of Performance For New Residential Hydronic Heaters And Forced-Air Furnaces":
Subpart QQQQ, Table, is amended to incorporate federal revisions at 83 FR 56713, November 14, 2018, by reference.

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

Regulation 61-62.63, Subpart A, "General Provisions":
Subpart A, Table, is amended to incorporate federal revisions at 83 FR 51842, October 15, 2018, and 83 FR 56713, November 14, 2018, by reference.

Regulation 61-62.63, Subpart CC, "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries":
Subpart CC, Table, is amended to incorporate federal revisions at 83 FR 60696, November 26, 2018, by reference.

Regulation 61-62.63, Subpart LLL, "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry":
Subpart LLL, Table, is amended to incorporate federal revisions at 83 FR 35122, July 25, 2018, and 83 FR 38036, August 3, 2018, by reference.

Regulation 61-62.63, Subpart OOO, "National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins":
Subpart OOO, Table, is amended to incorporate federal revisions at 83 FR 51842, October 15, 2018, by reference.

Regulation 61-62.63, Subpart UUU, "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units":
Subpart UUU, Table, is amended to incorporate federal revisions at 83 FR 60696, November 26, 2018, by reference.

Regulation 61-62.63, Subpart DDDDD, "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Industrial Boilers and Process Heaters":
Subpart DDDDD, Table, is amended to incorporate federal revisions at 83 FR 56713, November 14, 2018, by reference.

Regulation 61-62.63, Subpart UUUUU, "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units":
Subpart UUUUU, Table, is amended to incorporate federal revisions at 83 FR 56713, November 14, 2018, by reference.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendments to Anthony Lofton of the Bureau of Air Quality; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; by fax at 803-898-4487; or by email at loftonat@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on June 24, 2019, the close of the public comment period. Comments received during the write-in public comment period by the deadline set forth above will be submitted by the Bureau to the S.C. Board of Health and Environmental Control ("Board") in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

The Board will conduct a public hearing on the proposed amendments during its August 8, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: http://www.scdhec.gov/Agency/docs/AGENDA.PDF.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/.

Statement of Need and Reasonableness

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Amendment of R.61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP).

Purpose: The EPA promulgated amendments to national air quality standards in 2018. The recent federal amendments include clarification, guidance, and technical revisions to requirements for NSPS mandated by 42 U.S.C. Section 7411, and for federal NESHAP for Source Categories mandated by 42 U.S.C. Section 7412. The Department, therefore, proposes amending the aforementioned regulations to codify federal amendments to these standards promulgated from January 1, 2018, through December 31, 2018. Additionally, the Department proposes amending R.61-62.60, Subpart Cf, Emission Guidelines and

Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

Legal Authority: 1976 Code Sections 48-1-10 et seq.

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 the Department's 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 its air quality regulations throughout each calendar year. Federal amendments in 2018 included revised NSPS rules 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. The proposed amendments also include revisions to R.61-62.60, Subparts Cf and DDDD, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law, which requires Department implementation of these Subparts.

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 amendments do not present a new cost to the regulated community. 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 and updating 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 THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the proposed amendments to R.61-62 will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS 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 are not adopted in South Carolina.

Text:

~~Indicates Matter Stricken~~
Indicates New Matter

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]

40 CFR Part 60 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
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]
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]

40 CFR Part 60 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
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]
Revision	Vol. 79	April 4, 2014	[79 FR 18952]
Revision	Vol. 80	March 16, 2015	[80 FR 13671]
Revision	Vol. 81	June 3, 2016	[81 FR 35824]
Revision	Vol. 81	June 30, 2016	[81 FR 42542]
Revision	Vol. 81	August 29, 2016	[81 FR 59276, 59332]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	June 23, 2017	[82 FR 28561]
Revision	Vol. 82	July 17, 2017	[82 FR 32644]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

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

Subpart Cf - "~~Emission Guidelines~~ Performance Standards and Compliance Times for Existing Municipal Solid Waste Landfills"

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

~~40 CFR Part 60 Subpart Cf~~			
~~**Federal Register Citation**~~	~~**Volume**~~	~~**Date**~~	~~**Notice**~~
~~Original Promulgation~~	~~Vol. 81~~	~~August 29, 2016~~	~~[81 FR 59276]~~

(A) All designated facilities as defined at 40 CFR 60.31f must comply with the requirements of this subpart.

(B) The compliance times, emission guideline conditions and requirements, operational standards for collection and control systems, test methods and procedures, compliance provisions, monitoring requirements, reporting requirements, recordkeeping requirements, and specifications for active collection systems set forth in 40 CFR 60.32f through 60.40f, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein and applicable to each designated facility.

40 CFR Part 60 Subpart Cf			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 81	August 29, 2016	[81 FR 59276]

(C) 40 CFR 60.41f, Definitions, is adopted and incorporated by reference as if fully repeated herein, except as follows: the word "Administrator" as used in this subpart shall mean the Department of Health and Environmental Control, with the exception of the sections within this subpart that may not be delegated by the EPA.

(D) The following authorities will not be delegated to state, local, or tribal agencies:

(1) Approval of alternative methods to determine the NMOC concentration or a site-specific methane generation rate constant (k).

(2) [Reserved]

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]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

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

Subpart DDDD - "Performance Standards~~Emissions Guidelines~~ and Compliance Times for Existing Commercial and Industrial Solid Waste Incineration Units"

~~The provisions of 40 CFR Part 60 Subpart DDDD, 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 DDDD~~			
~~**Federal Register Citation**~~	~~**Volume**~~	~~**Date**~~	~~**Notice**~~
~~Original Promulgation~~	~~Vol. 65~~	~~December 1, 2000~~	~~[65 FR 75338]~~
~~Revision~~	~~Vol. 70~~	~~September 22, 2005~~	~~[70 FR 55568]~~
~~Revision~~	~~Vol. 76~~	~~May 18, 2011~~	~~[76 FR 28662]~~
~~Revision~~	~~Vol. 78~~	~~February 7, 2013~~	~~[78 FR 9112]~~
~~Revision~~	~~Vol. 81~~	~~June 23, 2016~~	~~[81 FR 40956]~~

(A) Except as provided in (B) below, incineration units that meet all three criteria set forth in 40 CFR 60.2550(a)(1) through (a)(3) are subject to this subpart and must comply with all applicable requirements of this subpart.

(B) This subpart exempts the types of units described in paragraphs (a) through (j) of 40 CFR 60.2555, but some units are required to provide notifications. For purposes of this paragraph, the words "Administrator" and "Agency" as used in 40 CFR 60.2555 shall be replaced by "Department" and "EPA Administrator" respectively.

(C) If the owner or operator of a CISWI unit or air curtain incinerator makes changes that meet the definition of modification or reconstruction after August 7, 2013, the CISWI unit becomes subject to 40 CFR Part 60, Subpart CCCC and Regulation 61-62.60, Subpart CCCC, and this subpart no longer applies to that unit.

(D) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this subpart, 40 CFR Part 60, Subpart CCCC and Regulation 61-62.60, Subpart CCCC do not apply to that unit. Such changes do not qualify as modifications or reconstructions under 40 CFR Part 60, Subpart CCCC or Regulation 61-62.60, Subpart CCCC.

(E) For purposes of this subpart, "you" means the owner or operator of a CISWI unit.

(F) Each owner or operator of an existing CISWI unit shall comply with the model rule standards, requirements, and provisions of 40 CFR Part 60, Subpart DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units), as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below:

40 CFR Part 60 Subpart DDDD			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 65	December 1, 2000	[65 FR 75338]
Revision	Vol. 70	September 22, 2005	[70 FR 55568]
Revision	Vol. 76	May 18, 2011	[76 FR 28662]
Revision	Vol. 78	February 7, 2013	[78 FR 9112]
Revision	Vol. 81	June 23, 2016	[81 FR 40956]
Revision	Vol. 84	April 16, 2019	[84 FR 15846]

These standards, requirements, and provisions are hereby incorporated and adopted by reference as follows:

(1) 40 CFR 60.2610 and 40 CFR 60.2615, Increments of Progress.

(2) 40 CFR 60.2620, 40 CFR 60.2625, and 40 CFR 60.2630, Waste Management Plan, due no later than compliance date listed in Table 1 below.

(3) 40 CFR 60.2635 through 40 CFR 60.2665, Operator Training and Qualification.

(4) 40 CFR 60.2670 through 60.2680, Emission Limitations and Operating Limits.

(5) 40 CFR 60.2690 through 60.2695, Performance Testing.

(6) 40 CFR 60.2700 through 60.2706, Initial Compliance Requirements.

(7) 40 CFR 60.2710 through 60.2725, Continuous Compliance Requirements.

(8) 40 CFR 60.2730 through 60.2735, Monitoring.

(9) 40 CFR 60.2740 through 60.2800, Recordkeeping and Reporting, including submission of waste management plan no later than compliance date listed in Table 1 below; with the exception of the following: all reports required under 40 CFR 60.2795(a), (b)(1), and (b)(2) must be submitted to the Department in addition to being sent to the EPA.

(10) 40 CFR 60.2805, Title V Operating Permits.

(11) 40 CFR 60.2810 and 40 CFR 60.2850(b) through 60.2870, Air Curtain Incinerators.

(12) 40 CFR 60.2875, Definitions, except that the word "Administrator" shall mean the Department of Health and Environmental Control, with the exception of provisions within this subpart that may not be delegated by the EPA.

(13) 40 CFR Part 60 Subpart DDDD Table 1, modified as follows:

TABLE 1 TO SUBPART DDDD OF PART 60 - COMPLIANCE SCHEDULES

Comply with compliance schedule	**By this date**
Final compliance with performance standards	February 7, 2018.

(14) 40 CFR Part 60 Subpart DDDD Tables 2 through 9, retitled as follows:

(a) Table 2 to Subpart DDDD - Emission Limitations That Apply to Incinerators Before February 7, 2018;

(b) Table 3 to Subpart DDDD - Operating Limits for Wet Scrubbers;

(c) Table 4 to Subpart DDDD - Toxic Equivalency Factors;

(d) Table 5 to Subpart DDDD - Summary of Reporting Requirements;

(e) Table 6 to Subpart DDDD - Emission Limitations That Apply to Incinerators on and After February 7, 2018;

(f) Table 7 to Subpart DDDD - Emission Limitations That Apply to Energy Recovery Units After February 7, 2018;

(g) Table 8 to Subpart DDDD - Emission Limitations That Apply to Waste-Burning Kilns After February 7, 2018; and

(h) Table 9 to Subpart DDDD - Emission Limitations That Apply to Small, Remote Incinerators After February 7, 2018

(G) For purposes of this subpart, the authorities referenced in 40 CFR 60.2542 will not be delegated to state, local, or tribal agencies.

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

Subpart OOOOa - "Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015"

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

40 CFR Part 60 Subpart OOOOa			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 81	June 3, 2016	[81 FR 35824]
Revision	Vol. 83	March 12, 2018	[83 FR 10628]

Regulation 61-62.60, Subpart QQQQ, shall be revised 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]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

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 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]

40 CFR Part 63 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
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]
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]

40 CFR Part 63 Subpart A			
Federal Register Citation	**Volume**	**Date**	**Notice**
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]
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]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	January 18, 2017	[82 FR 5401]
Revision	Vol. 82	October 11, 2017	[82 FR 47328]
Revision	Vol. 82	October 16, 2017	[82 FR 48156]
Revision	Vol. 83	October 15, 2018	[83 FR 51842]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

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]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

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]
Revision	Vol. 81	July 25, 2016	[81 FR 48356]
Revision	Vol. 82	June 23, 2017	[82 FR 28562]
Revision	Vol. 82	August 22, 2017	[82 FR 39671]
Revision	Vol. 83	July 25, 2018	[83 FR 35122]
Revision	Vol. 83	August 3, 2018	[83 FR 38036]

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

Subpart OOO - "National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins"

The provisions of 40 CFR Part 63 Subpart OOO, 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 OOO			
Federal Register Citation	**Volume**	**Date**	**Notice**
Original Promulgation	Vol. 65	January 20, 2000	[65 FR 3276]
Revision	Vol. 65	February 22, 2000	[65 FR 8768]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 79	October 8, 2014	[79 FR 60898]
Revision	Vol. 83	October 15, 2018	[83 FR 51842]

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]

40 CFR Part 63 Subpart UUU			
Federal Register Citation	**Volume**	**Date**	**Notice**
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]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

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

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]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

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]
Revision	Vol. 81	April 6, 2016	[81 FR 20172]

40 CFR Part 63 Subpart UUUUU			
Federal Register Citation	**Volume**	**Date**	**Notice**
Revision	Vol. 82	April 6, 2017	[82 FR 16736]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

ATTACHMENT B

16 DRAFTING NOTICES

Synopsis:

The Department of Disabilities and Special Needs proposes to add Article 8, regarding the review and approval of research proposals by the Department of Disabilities and Special Needs.

Legislative review of this amendment is required.

DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Notice of Drafting:

The Department of Disabilities and Special Needs proposes to revise Article 9, Unclassified Facilities and Programs, in Chapter 88 of the South Carolina Code of State Regulations. Interested persons may submit their comments in writing to Tana Vanderbilt, General Counsel, 3440 Harden Street Extension, Columbia, SC 29203. To be considered, all comments must be received no later than 5:00 pm on March 25, 2019, the close of the drafting comment period.

Synopsis:

The Department of Disabilities and Special Needs conducted a review of Article 9, of Chapter 88, and proposes to amend and revise the regulatory language to update outdated references, and amend certain sections to ensure proper and efficient administration of its duties.

Legislative review of these amendments is required.

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") proposes amending Regulation 61-62, Air Pollution Control Regulations and Standards. Interested persons may submit comments on the proposed amendments to Anthony T. Lofton of the Air Regulation and SIP Management Section, Bureau of Air Quality; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; or via email at loftonat@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 25, 2019, the close of the drafting comment period.

Synopsis:

The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments include revisions to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories at 40 CFR Parts 60 and 63.

(1) The Department proposes amending Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, to incorporate by reference federal amendments promulgated from January 1, 2018, through December 31, 2018.

(2) The Department proposes amending Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference federal amendments promulgated from January 1, 2018, through December 31, 2018.

The Department also proposes amending Regulation 61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, as deemed necessary to maintain compliance with federal law. These changes may include corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement of the 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.

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") proposes amending R.61-69, Classified Waters. Interested persons may submit comment(s) on the proposed amendment to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 25, 2019, the close of the draft comment period.

Synopsis:

Section 303(c)(2)(B) of the federal Clean Water Act ("CWA") requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. The Department proposes amending R.61-69 to clarify and correct as needed waterbody names, counties, classes, and descriptions.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes repealing R.61-23, Control of Anthrax. Interested persons may submit comment(s) on the proposed repeal to Mike Elieff of the Bureau of Public Health Preparedness; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia,

(x) ACTION/DECISION
( ) INFORMATION

Date: May 9, 2019

To: S.C. Board of Health and Environmental Control

From: Bureau of Land and Waste Management

Re: Notice of Proposed Regulation Amending R.61-79, Hazardous Waste Management Regulations.

I. Introduction

The Bureau of Land and Waste Management ("Bureau") proposes the attached Notice of Proposed Regulation amending R.61-79, *Hazardous Waste Management Regulations*, for publication in the May 24, 2019, *South Carolina State Register* ("*State Register*"). Legal authority resides in the South Carolina Hazardous Waste Management Act, S.C. Code Ann. Sections 44-56-10 et seq., which authorizes the Department of Health and Environmental Control ("Department") to promulgate hazardous waste management regulations, procedures, or standards as may be necessary to protect human health and the environment. The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(A), requires General Assembly review of these amendments.

II. Facts

1. The Department proposes adopting the "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, at 80 FR 1694-1814 and May 30, 2018, at 83 FR 24664-24671. This United States Environmental Protection Agency ("EPA") rule revised several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to encourage recycling of hazardous waste. EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion) describe the proposed amendments. These checklists may be found at https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act. The Department also proposes amending R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

2. The Department had a Notice of Drafting published in the March 22, 2019, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. The Department did not receive any comments during the public comment period.

3. Appropriate Department staff conducted an internal review of the proposed amendment on March 28, 2019.

4. The Department conducted an outreach meeting on May 3, 2019, with the Solid Waste Ad Hoc group, members from the SC Chamber Environmental Technical Committee (specifically the Solid Waste subcommittee) and the South Carolina Manufacturers Association. The Department also published a notice on the Regulation Development Update webpage and provided notice to interested parties *via* email.

III. Request for Approval

The Bureau respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the May 24, 2019, *State Register*.

Henry Porter
Bureau Chief

Myra Reece
Director

Attachments:
A. Notice of Proposed Regulation
B. Notice of Drafting published in the March 22, 2019, *State Register*

ATTACHMENT A

STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR R.61-79, *Hazardous Waste Management Regulations*

May 9, 2019

Document No. _____
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 proposes adopting the "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, at 80 FR 1694-1814 and May 30, 2018, at 83 FR 24664-24671. This United States Environmental Protection Agency ("EPA") rule revised several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to encourage recycling of hazardous waste. EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion) describe the proposed amendments. These checklists may be found at https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act. The Department also proposes amending R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

The Department had a Notice of Drafting published in the March 22, 2019, South Carolina State Register.

Section-by-Section Discussion of Proposed Amendments:

Revise 61-79.260. Table of Contents.

260.2(c). Insert language that was erroneously deleted from previous adoption of federal rule "Hazardous Waste Electronic Manifest Rule."

260.10. Revise to clarify language in the definitions of "EPA Identification Number" and "Facility." Add new definitions "Hazardous secondary material generator," "Intermediate facility," "Land-based unit," "Remanufacturing," and "Transfer facility."

260.30. Amend to clarify and add language on non-waste determinations and variances from classification as a solid waste.

260.33. Amend to clarify language on procedures for variances from classification as a solid waste or, for variances to be classified as a boiler, or for non-waste determinations.

260.34. Add new section on standards and criteria for non-waste determinations.

Revise 61-79.261. Table of Contents.

261.1(c)(4). Amend to add language that further describes a reclaimed material.

261.2(c)(3). Amend to clarify language to help describe the table of definitions of solid waste.

261.2(c)(4). Amend to replace “x” to “*” in accordance with the language used in the Table. Delete a reference in the Table.

261.4(a)(23). Amend to unreserve section and add language describing hazardous secondary material that are not considered solid waste.

261.4(a)(24). Amend to insert language describing hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste.

261.4(a)(25). Amend to insert language describing hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste.

261.4(a)(27). Add new section to describe hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste.

261.6(a)(2). Amend to add “part” before reference section and “of this chapter” after. Amend to un-reserve (iii) and add language to describe recyclable materials that are not subject to certain requirements. Remove (v).

261.6(a)(3). Amend to clarify reference sections.

261.11(c). Amend to revise reference to 261.5 that was previously removed and reserved.

261.30(d). Amend to revise reference to 261.5 that was previously removed and reserved.

261.31(b)(4)(i). Amend to add language to clarify types of light trucks/utility vehicles and complete vehicles.

261.31(b)(4)(ii). Amend to clarify language for required generator records of hazardous wastes from non-specific sources.

261.39(d). Amend to replace “40 CFR part” with “R.61-79.”

261 Subparts F and G. Add and reserve.

261 Subpart H. Add new subpart describing the financial requirements for management of excluded hazardous secondary materials.

261 Subpart I. Add new subpart describing the use and management of containers for hazardous secondary materials.

261 Subpart J. Add new subpart describing tank systems for hazardous secondary material.

261 Subpart K to L. Add and reserve new subparts.

261 Subpart M. Add new subpart describing emergency preparedness and response for management of excluded hazardous secondary materials.

261 Subparts N to Z. Add and reserve new subparts.

261 Subpart AA. Add new subpart describing air emission standards for process vents.

261 Subpart BB. Add new subpart describing air emission standards for equipment leaks.

261 Subpart CC. Add new subpart describing air emission standards for tanks and containers.

262.21(b)(8). Revise to clarify information that must be submitted on the registration application to EPA.

262.21(f)(2). Revise to clarify a specification of the paper manifest and continuation sheets.

262.21(h)(3). Revise to replace “decisions” with “decision”.

262.33. Amend to clarify language and delete last sentence.

262.42(a). Amend to add language on exception reporting for generators of greater than 1000kg of acute hazardous waste. Replace “Agency” with “Department”.

262.206(b). Amend to add section title, “Management of Containers in the Laboratory:”.

262.212(e)(3). Amend to revise reference to 261.5 that was previously removed and reserved.

263.20(a)(1). Amend to clarify language on manifest requirements for transporters.

264.72(c). Amend to replace “Regional Administrator” with “Department”.

264.76(a). Amend to replace “Agency” with “Department” and remove the reference to 261.5.

264.147(h)(1). Amend to replace “letter or credit” with “letter of credit”.

264.151(a)(1). Amend to replace “standby” with “trust agreement for a”.

264.151(k). Amend to change reference section 264.147(i) and 265.147(i) to 264.147(h) and 265.147(h).

264.151(l). Amend to change reference section 264.147(h) and 265.147(h) to 264.147(i) and 265.147(i).

264.151 Appendix K. Revise to delete incorrect punctuation.

264.151 Appendix M, Section 8(c). Revise to change “depositary” with “depository”.

264.151 Appendix N, Section 3(c)(1). Amend to replace “or [insert Grantor]” with “of [insert Grantor]”.

264.151 Appendix N, Section 3(e)(3). Amend to replace “loaned to” with “loaned by”.

264.151 Appendix N, Section 8(c). Revise to change “depositary” with “depository”.

264.151 Appendix N, Section 12. Amend to correct punctuation.

264.151 Appendix N, Section 16. Amend to replace “reasonable” with “reasonably”.

264.172. Add section to describe compatibility of waste with containers.

264.193(e)(2)(v)(B). Amend to replace reference section “R.61-79.261.21” to “R.61-79.261.23”.

264.221(e)(2)(i)(B). Amend to add reference section of underground source of drinking water.

265.56(b). Amend to replace “area” with “areal” and clarify language.

265.76(a). Amend to replace “Agency” with “Department”.

265.255(b). Amend to replace “waste piles” with “waste pile units”.

265.314(f)(2). Amend to replace “40 CFR” with “section”.

266.100(c)(3). Amend to revise the reference to 261.5 that was previously removed and reserved.

266.108(c) Note. Amend to revise the reference to 261.5 that was previously removed and reserved.

270.14(a). Amend to replace “specification” with “specifications”.

270.26(c)(15). Amend to insert “of” after “(a) through (f)”.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on June 24, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendment during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: http://www.scdhec.gov/Agency/docs/AGENDA.PDF.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated *State Register* documents at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/.

Preliminary Fiscal Impact Statement

The proposed amendments have no substantial fiscal or economic impact on the state or its political subdivisions. 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 requirements of this regulation.

Statement of Need and Reasonableness

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-79, Hazardous Waste Management Regulations

Purpose: The purpose of these amendments is to realize the benefits of and maintain state consistency with the EPA's January 13, 2015, and May 30, 2018, amendments to 40 CFR 260 through 279, and to correct typographical errors, citation errors, and other errors and omissions that have come to the attention of the Department in R.61-79, Hazardous Waste Management Regulations.

Legal Authority: 1976 Code Sections 44-56-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

The Department proposes amending R.61-79 to adopt the EPA's "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, at 80 FR 1694-1814 and May 20, 2018, at 83 FR 24664-24671. This rule revises several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). The purpose of these revisions is to encourage recycling of hazardous waste. The federal rule has made the recycling-related provisions less stringent than previous standards set forth. EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion) describe the proposed amendments. The proposed revisions to the typographical, citation, and other errors and omissions in R.61-79 will correct form references, add language omitted during previous rule adoption, and other changes to conform to federal law.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increased cost to the state or its political subdivisions resulting from these proposed revisions. The EPA estimates in the Federal Register, Volume 80, Number 8, January 13, 2015 on page 1769 that the Definition of Solid Waste Rule will result in cost savings for the regulated community due to increased recycling of hazardous wastes. The proposed revisions to the typographical, citation, and other errors and omissions in R.61-79 will correct form references, add language omitted during previous rule adoption, and other changes to conform to federal law. The proposed amendments will benefit the regulated community by clarifying and updating the regulations and increasing ease of use and will not result in increased costs.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates regarding costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The proposed revision to R.61-79 will provide continued protection of the environment and public health, as indicated above.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effect on the environment and/or public health associated with these revisions. Rather, the State's authority to implement programs for which the State has been delegated authority, which are beneficial to public health and the environment, would be compromised if these amendments were not adopted in South Carolina.

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 regulation must be equivalent to and consistent with the U.S. EPA's regulations under the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et. seq*. The proposed revisions encourage recycling of hazardous waste. The Department also proposes amending R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

Text:

~~Indicates Matter Stricken~~
Indicates New Matter

61-79. Hazardous Waste Management Regulations.

Statutory Authority: S.C. Code Ann. Section 44-56-10 et seq.

Revise 61-79.260. Table of Contents to read:

SUBPART C. Rulemaking Petitions

260.20. General.
260.21. Petitions for equivalent testing or analytical methods.
260.22. Petitions to amend part 261 to exclude a waste produced at a particular facility.
260.23. Petitions to amend 40 CFR part 273 to include additional hazardous wastes.
260.30. Non-waste determinations and ~~V~~variances from classification as a solid waste.
260.31. Standards and criteria for variances from classification as a solid waste.
260.32. Variance to be classified as a boiler.
260.33. Procedures for variances from classification as a solid waste or, for variances to be classified as a boiler, or for non-waste determinations.
260.34. Standards and criteria for non-waste determinations.
260.40. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

260.41. Procedures for case-by-case regulation of hazardous waste recycling activities.
260.42. Notification requirement for hazardous secondary materials.
260.43. Legitimate recycling of hazardous secondary materials.

Add 61-79.260.2(c) to read:

(c)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with section 262.20(a)(3).

(2) EPA will make any electronic manifest that is prepared and used in accordance with section 262.20(a)(3), or any paper manifest that is submitted to the system under sections 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after ninety (90) days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

Revise 61-79.260.10. to read:

"EPA ~~i~~Identification ~~n~~Number" means the number assigned by ~~EPA~~the Department to each generator, transporter, and treatment, storage, or disposal facility.

"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). (2) For the purpose of implementing corrective action under sections 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). (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to section 264.101, but is subject to corrective action requirements if the site is located within such a facility.

"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 sections 261.2(a)(2)(ii) and 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 ten (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.

"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. to read:

260.30. Non-waste determinations and ~~V~~variances from classification as a solid waste.

In accordance with the standards and criteria in ~~Section~~sections 260.31 and 260.34 and the procedures in ~~S~~section 260.33, the Department may determine on a case by case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in ~~R.61-79.~~section 261.1(c)(8);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; ~~and~~

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered~~.~~;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

Revise 61-79.260.33 to read:

260.33. Procedures for variances from classification as a solid waste ~~or~~, for variances to be classified as a boiler, or for non-waste determinations.

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.

(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 260.31 ~~or~~, 260.32, or 260.34, as applicable.

Add 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 section 260.31).

(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 section 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 sections 261.2 or 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 section 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 sections 261.2 or 261.4.

Add Subparts F through CC to 61-79.261. Table of Contents to read:

SUBPART F. [Reserved]

SUBPART G. [Reserved]

SUBPART H.

261.140. Applicability.
261.141. Definitions of terms as used in this subpart.
261.142. Cost estimate.
261.143. Financial assurance condition.
261.144. [Reserved]
261.145. [Reserved]
261.146. [Reserved]
261.147. Liability requirements.
261.148. Incapacity of owners or operators, guarantors, or financial institutions.
261.151. Wording of the instruments.
261.151. Appendices A-1 through M-2.

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 sections 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 section 266.100(d)(1) through (3), and if the residuals meet the requirements specified in section 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))~~unless they meet the requirements of section 261.4(a)(17), or section 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) to read:

(4) Accumulated speculatively. Materials noted with an "~~x~~*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

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)(25)	Speculative Accumulation (261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in ~~S~~sections 261.31 or 261.32)	(*)	(*)	(*)	(*)

Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(*)	(*)
Commercial chemical products listed in ~~S~~section 261.33	(*)	(*)	-	-
Scrap metal that is not excluded under section 261.4(a)(13)	(*)	(*)	(*)	(*)

Note: The terms “spent materials,” “sludges,” “by-products,” “scrap metal,” and “processed scrap metal” are defined in section 261.1.

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 section 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 section 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 (3) 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 Department of Transportation (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 (3) 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 (3) 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 section 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 section 261.1(c)(8).

(C) Notice is provided as required by section 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 sections 266.80 and 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 three factors in section 260.43(a) and how the factor in section 260.43(b) was considered. Documentation must be maintained for three (3) years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in R.61-79.261 subpart M are met.

Revise 61-79.261.4(a)(24) to read:

(24) ~~[Withdrawn]~~Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in section 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 ten (10) days at a transfer facility, as defined in section 260.10, and is packaged according to applicable DOT 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 paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see sections 266.80 and 273.2);

(iv) The reclamation of the material is legitimate, as specified under section 260.43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in section 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) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA part B permit (a federally-issued RCRA permit or a hazardous waste permit issued by the Department) or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, 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, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three (3) years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(1) Does the available information indicate that the reclamation process is legitimate pursuant to section 260.43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process.

(2) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to section 260.42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per paragraph (a)(24)(vi)(F) of this section? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's

compliance with the notification requirements per section 260.42, including the requirement in section 260.42(a)(5) to notify the Department whether the reclaimer or intermediate facility has financial assurance.

(3) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three (3) years for violations of the South Carolina Hazardous Waste Management Regulations and has not been classified as a significant non-complier with the Department? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three (3) years for violations of the South Carolina Hazardous Waste Management Regulations and has been classified as a significant non-complier with the Department, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, 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) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator must maintain for a minimum of three (3) years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by a regulatory authority within seventy-two (72) hours, or within a longer period of time as specified by the regulatory authority. The certification statement must:

(1) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(2) Incorporate the following language: “I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with section 261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.”

(D) 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.

(E) 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);

(F) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in R.61-79.261 subpart M.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in section 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 from which the hazardous secondary materials were received;

(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 R.61-79.261 subpart C, or if they themselves are specifically listed in R.6-79.261 subpart D, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of R.61-79.260 through 272.

(F) The reclaimer and intermediate facility have financial assurance as required under R.61-79.261 subpart H,

(vii) In addition, all persons claiming the exclusion under paragraph (a)(24) of this section must provide notification as required under section 260.42.

Revise 61-79.261.4(a)(25) to read:

(25) ~~[Reserved]~~Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of paragraph (a)(24)(i) through (v) of this section (excepting paragraph (a)(24)(v)(B)(2) of this section for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number, and EPA Identification Number (if applicable) of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, and the DOT proper shipping name, hazard class, and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), and type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms "EPA Acknowledgement of Consent", "country of import", and "country of transit" are used as defined in section 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

(ii) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(iii) Except for changes to the telephone number in paragraph (a)(25)(i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (a)(25)(i)(D) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes (except for changes to paragraph (a)(25)(i)(I) of this section and in the ports of entry to and departure from countries of transit pursuant to paragraphs (a)(25)(i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(25)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to paragraph (a)(25)(i) of this section within thirty (30) days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility, or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with paragraph (iii) of this section and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators must keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three (3) years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. Such reports must include the following information:

(A) Name, mailing and site address, and EPA Identification Number (if applicable) of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and EPA Identification Number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped, and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: “I certify under penalty of law that I have personally examined and am familiar with the information submitted in

this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by section 260.42.

Add 61-79.261.4(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 (1) 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 (1) 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 (1) 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/or 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, and 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 (1) 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 EPA or the Department, if the state is authorized for the program, and update the notification every two (2) years per section 260.42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(1) The name, address, and EPA Identification 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 (3) 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 R.61-79.261 subparts I and J, 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 section 261.1(c)(8).

Revise 61-79.261.6(a)(2) to read:

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of R.61-79.266 and all applicable provisions in R.61-79.268, 270, and ~~.~~124.

(i) Recyclable materials used in a manner constituting disposal (~~part~~ R.61-79.266~~,~~ subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of R.61-79.264 or 265 (~~Part~~ R.61-79.266~~, S~~subpart H);

(iii) ~~[Reserved 6/06]~~Recyclable materials from which precious metals are reclaimed (R.61-79.266 subpart F);

(iv) ~~Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);~~Spent lead-acid batteries that are being reclaimed (R.61-79.266 subpart G).

~~(v) Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G).~~

Revise 61-79.261.6(a)(3) to read:

(3) The following recyclable materials are not subject to regulation under R.61-79.124, 262 through ~~266, or~~ 268, or 270 and are not subject to the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120 and section 3010 RCRA.

Revise 61-79.261.11(c) to read:

(c) The Department will use the criteria for listing specified in this section to establish the exclusion limits referred to in ~~Section 261.5(c)~~section 262.13.

Revise 61-79.261.30(d) to read:

(d) The following hazardous wastes listed in section 261.31 are subject to the exclusion limits for acutely hazardous wastes established in section 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

Revise 61-79.261.31(b)(4)(i) to read:

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

Revise 61-79.261.31(b)(4)(ii) to read:

(ii) Generators must maintain in their on-site records~~,~~ documentation and information sufficient to prove that the ~~exempted~~wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. ~~Records~~These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste~~s~~ volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than three (3) years. The ~~R~~retention period for the documentation is automatically extended during ~~an~~the course of any enforcement action or as requested by the ~~Regional Administrator~~Department or the state regulatory authority.

Revise 61-79.261.39(d) to read:

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of ~~40 CFR part~~ R.61-79.266~~,~~ subpart C instead of the requirements of this section.

Add and reserve 61-79.261 Subparts F and G to read:

SUBPART F: [Reserved]

SUBPART G: [Reserved]

Add 61-79.261 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 section 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 section 265.141(d), (f), (g), and (h) have the same meaning in this subpart as they do in section 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 section 265.141(d)). The owner or operator may use costs for on-site disposal in accordance with applicable requirements if it can be demonstrated 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 section 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 section 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 sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 261.143. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 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 thirty (30) days after a change in the facility's operating plan or design that would increase the costs of conducting the activities described in paragraph (a) or no later than sixty (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 section 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 section 261.4(a)(24). They 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 section 261.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see section 261.151(a)(2)). Schedule A of the trust agreement must be updated within sixty (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 sixty (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, a written request may be submitted to the Department for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within sixty (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 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 sixty (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, it may withhold reimbursements of such amounts as deemed prudent until it determines, in accordance with section 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, it 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 section 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 section 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 section 261.4(a)(24);

(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 ninety (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 sixty (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 one hundred twenty (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 section 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 section 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 one hundred twenty (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 one hundred twenty (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 sixty (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 section 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 ninety (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 thirty (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 section 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, and to pay the costs of the performance of activities required under subpart G of R.61-79.264 or 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 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 sixty (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, it may withhold reimbursement of such amounts as deemed prudent until it 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, it 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 one hundred twenty (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 sixty (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 the insurance policy may be terminated 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 they pass 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 (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least ten (10) million dollars; and

(D) Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) 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 (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least ten (10) million dollars; and

(D) Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) 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) through (4) of the letter from the owner's or operator's chief financial officer (section 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) through (4) of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

(3) To demonstrate that they meet 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 section 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 U.S. Securities and Exchange Commission (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 on 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 ninety (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 ninety (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 Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that they have 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 ninety (90) days after the end of such fiscal year, when the documents specified in paragraph (e)(3) of this section will be submitted; 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 ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) 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, notice must be sent to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (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 one hundred twenty (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 thirty (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 thirty (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 section 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 section 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 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 one hundred twenty (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 ninety (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 (1) 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, 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, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) 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 (1) 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. 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 financial assurance obligations under section 261.4(a)(24)(vi)(F) must submit a plan for removing all hazardous secondary material residues to the Department at least one hundred eighty (180) days prior to the date on which operations are expected to cease under the exclusion.

(2) The plan must include, at least:

(i) For each hazardous secondary materials storage unit subject to financial assurance requirements under section 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;

(ii) 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;

(iii) 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

(iv) 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 section 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 thirty (30) days from the date of the notice. The Department will also, in response to a request or at its discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning the plan. The Department will give public notice of the hearing at least thirty (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 (2) notices may be combined.) The Department will approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the Department does not approve the plan, it 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 thirty (30) days after receiving such written statement. The Department will approve or modify this plan in writing within sixty (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 sixty (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 it releases the owner or operator from the financial assurance requirements for section 261.4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of this section. Within sixty (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 they are no longer required under section 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 section 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 one (1) million dollars per occurrence with an annual aggregate of at least two (2) million dollars, 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 section 261.151(h). The wording of the certificate of insurance must be identical to the wording specified in section 261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. 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 (1) 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 (1) 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 thirty (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 section 260.10, which are used to manage hazardous secondary materials excluded under section 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 three (3) million dollars 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 four (4) million dollars per occurrence and eight (8) million dollars 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 section 261.151(h). The wording of the certificate of insurance must be identical to the wording specified in section 261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the 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 (1) 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 (1) 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 thirty (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, it 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 sixty (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 section 261.143(h), the Department will notify the owner or operator in writing that they are no longer required under section 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 they pass 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 (6) times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least ten (10) million dollars; and

(C) Assets in the United States amounting to either:

(1) At least ninety (90) percent of their total assets; or

(2) At least six (6) times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for their 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 ten (10) million dollars; and

(C) Tangible net worth at least six (6) 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 ninety (90) percent of their total assets; or

(2) at least six (6) 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 sections 264.147 and 265.147.

(3) To demonstrate that they meet this test, the owner or operator must submit the following three (3) items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 261.151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by section 261.143(e), and liability coverage, the letter specified in section 261.151(f) must be submitted to cover both forms of financial responsibility; a separate letter as specified in section 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 on 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 ninety (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 ninety (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 Department and to each state agency or Regional Administrator, as appropriate, where 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 there are 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 ninety (90) days after the end of such fiscal year, when the documents specified in paragraph (f)(3) of this section will be submitted; 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 ninety (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, 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 must be obtained. Evidence of liability coverage must be

submitted to the Department within ninety (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 assurance for the entire amount of required liability coverage as specified in this section within thirty (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 section 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 Attorney General or Insurance Commissioner 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 the Department that a guarantee executed as described in this section and section 264.151(g)(2) is a legally valid and enforceable obligation in South Carolina

(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 the Department that a guarantee executed as described in this section and section 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 section 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 section 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 section 261.151(k) of this chapter.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner 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 the Department that a surety bond executed as described in this section and section 261.151(k) is a legally valid and enforceable obligation in South Carolina.

(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 trust 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 section 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 ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in section 261.143(e) must make such a notification if named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of section 261.143 or section 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 sixty (60) days after such an event.

261.151. Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in section 261.143(a) must be worded as noted in section 261.151 Appendix A-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Section 261.151 Appendix A-2 is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in section 261.143(a).

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 261.143(b), must be worded as noted in section 261.151 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 section 261.143(c), must be worded as noted in section 261.151 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 section 261.143(e), must be worded as noted in section 261.151 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 section 261.143(e), must be worded as noted in section 261.151 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 section 261.147(f) must be worded as noted in section 261.151 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 section 261.143(e), must be worded as noted in section 261.151 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 section 261.147(g), must be worded as noted in section 261.151 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 section 261.147 must be worded as noted in section 261.151 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 section 261.147 must be worded as noted in section 261.151 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 section 261.147(h), must be worded as noted in section 261.151 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 section 261.147(i), must be worded as noted in section 261.151 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 section 261.147(j), must be worded as noted in section 261.151 Appendix L-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Section 261.151 Appendix L-2 is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in section 261.147(j).

(m)(1) A standby trust agreement, as specified in section 261.147(h), must be worded as noted in section 261.151 Appendix M-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

(2) Section 261.151 Appendix M-2 is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 261.147(h).

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 South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under R.61-79.264 or 265, or satisfying the conditions of the exclusion under section 261.4(a)(24) shall provide assurance that funds will be available if needed for care of the facility under subpart G of R.61-79.264 or 265, 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 section 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 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:

(a) 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 state government;

(b) 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

(c) 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 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 Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the 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 sixty (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 ninety (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 ten (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, or their designees, 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 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 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 section 261.151 Appendix A-1 as such regulations were constituted on the date set forth above.

[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

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 they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know 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 they signed their 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

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, hereafter referred to as 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 section 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 South Carolina Hazardous Waste Management Regulation to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under section 261.4(a)(24),

WHEREAS said Principal is required to provide financial assurance as a condition of the permit or interim status or as a condition of an exclusion under R.61-79.261.4(a)(24),

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 section 261.4(a)(24),

OR, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the Department 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 ninety (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 one hundred twenty (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 twenty (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 section 261.151 Appendix 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, 29021

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 section 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 Hazardous Waste Management Act.”

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (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 one hundred twenty (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 section 261.151 Appendix 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: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which 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 section 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 section 261.151 Appendix D as 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 Department 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 40 CFR 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 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 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 Department 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 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 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 U.S. 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 section 261.143 are used. Fill in Alternative II if the criteria of paragraph (e)(1)(ii) of section 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 ninety (90) percent of firm's assets are located in the U.S.)	$____
	10.	Is line 3 at least $10 million?	Yes/No
	11.	Is line 3 at least 6 times line 1?	Yes/No
	12.	Is line 7 at least 6 times line 1?	Yes/No
*	13.	Are at least ninety (90) percent of firm's assets located in the U.S.? If not, complete line 14	Yes/No
	14.	Is line 9 at least 6 times line 1?	Yes/No
	15.	Is line 2 divided by line 4 less than 2.0?	Yes/No
	16.	Is line 8 divided by line 2 greater than 0.1?	Yes/No
	17.	Is line 5 divided by line 6 greater than 1.5?	Yes/No

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.)	$____
	7.	Is line 5 at least $10 million?	Yes/No
	8.	Is line 5 at least 6 times line 1?	Yes/No
*	9.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 10	Yes/No
	10.	Is line 6 at least 6 times line 1?	Yes/No

I hereby certify that the wording of this letter is identical to the wording specified in section 261.151 Appendix E as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

261.151. APPENDIX F

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 section 261.147 [insert "and costs assured section 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.61-79.261: ____

The firm identified above guarantees, through the guarantee specified in subpart H of R.61-79.261, 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.61-79.264 and 265: ____

The firm identified above guarantees, through the guarantee specified in subpart H of R.61-79.264 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 section 261.143(e) or closure or post-closure care costs under sections 264.143, 264.145, 265.143, or 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 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 Department 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 40 CFR 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 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 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 Department 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 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 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 U.S. 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 section 261.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of section 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 ninety (90) percent of assets are located in the U.S., give total U.S. assets	$____
	7.	Is line 5 at least ten (10) million dollars?	Yes/No
	8.	Is line 4 at least six (6) times line 1?	Yes/No
	9.	Is line 5 at least six (6) times line 1?	Yes/No
*	10.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 11	Yes/No
	11.	Is line 6 at least six (6) times line 1?	Yes/No

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 ninety (90) percent of assets are located in the U.S.)	$____
	7.	Is line 5 at least ten (10) million dollars?	Yes/No
	8.	Is line 5 at least six (6) times line 1?	Yes/No
	9.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 10.	Yes/No
	10.	Is line 6 at least six (6) times line 1?	Yes/No

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under section 261.143(e) or closure or post-closure care costs under sections 264.143, 264.145, 265.143, or 265.145.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (e)(1)(i) of section 261.143 and (f)(1)(i) of section 261.147 are used. Fill in Alternative II if the criteria of paragraphs (e)(1)(ii) of section 261.143 and (f)(1)(ii) of section 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 ninety (90) percent of assets are located in the U.S.)	$____
	12.	Is line 5 at least ten (10) million dollars?	Yes/No
	13.	Is line 5 at least six (6) times line 3?	Yes/No
	14.	Is line 9 at least six (6) times line 3?	Yes/No
*	15.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 16.	Yes/No
	16.	Is line 11 at least six (6) times line 3?	Yes/No
	17.	Is line 4 divided by line 6 less than 2.0?	Yes/No
	18.	Is line 10 divided by line 4 greater than 0.1?	Yes/No
	19.	Is line 7 divided by line 8 greater than 1.5?	Yes/No

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 the U.S. (required only if less than ninety (90) percent of assets are located in the U.S.)	$____
	9.	Is line 7 at least ten (10) million dollars?	Yes/No
	10.	Is line 7 at least six (6) times line 3?	Yes/No
*	11.	Are at least ninety (90) percent of assets located in the U.S.? If not complete line 12.	Yes/No
	12.	Is line 8 at least six (6) times line 3?	Yes/No

I hereby certify that the wording of this letter is identical to the wording specified in sections 261.151 Appendix 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 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 sections 264.141(h) and 265.141(h)" to the South Carolina Department of Health and Environmental Control, hereafter referred to as 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 section 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 section 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 265 of this chapter, as applicable, or establish a trust fund as specified in section 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 ninety (90) days, by certified mail, notice to the Department and to [owner or operator] that they intend 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 one hundred twenty (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 ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that they are disallowed from continuing as a guarantor, they shall establish alternate financial assurance as specified in of R.61-79.264, 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, 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 265 or the financial assurance condition of section 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 section 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 one hundred twenty (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, 265, or subpart H of R.61-79.261, as applicable, and obtain written approval of such assurance from the Department within ninety (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, 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 section 261.151 Appendix 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

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws 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 section 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 ninety (90) days, by certified mail, notice to the Department and to [owner or operator] that they intend to provide alternate liability coverage as specified in R.61-79.261.147, as applicable, in the name of [owner or operator]. Within one hundred twenty (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 ten (10) days after commencement of the proceeding. Guarantor agrees that within thirty (30) days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that they are disallowed from continuing as a guarantor, they 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 thirty (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]:

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 approve, 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 one hundred twenty (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 $[insert amount].

[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 section 261.151 Appendix 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:

261.151. 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 section 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 section 261.147(f).

(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 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 sixty (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 section 261.151 Appendix H as such regulation was constituted on the date set forth above, 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]

261.151. 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, 265, and the financial assurance condition of section 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 section 261.147.

(c) Whenever requested by the South Carolina Department of Health and Environmental Control, hereafter referred to as 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 sixty (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 the Department.

I hereby certify that the wording of this instrument is identical to the wording specified in section 261.151 Appendix I as such regulation was constituted on the date set forth above, 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]

261.151. 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 $[insert amount]. 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 one hundred twenty (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 section 261.151 Appendix 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"].

261.151. 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 (if any issued), 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 44-56 et seq. and section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR parts 264, 265, and subpart H of 40 CFR part 261 (if applicable).

(3) Rules and regulations of the South Carolina Department of Health and Environmental Control, particularly R.61-79.264, 265, and subpart H of R.61-79.261.

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 $[insert amount].

[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 one hundred twenty (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 section 261.151 Appendix 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: $

261.151. 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 South Carolina Department of Health and Environmental Control, hereafter referred to as the "Department," an agency of South Carolina, 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 $[insert amount].

[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 thirty (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 sixty (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 ninety (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 ten (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, or their designees, 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) 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 (ten) 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 appropriate Department, or by the Trustee and the appropriate 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 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 set forth above. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-79.261.151 Appendix L as such regulations were constituted on the date set forth above.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

261.151. APPENDIX L-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

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 they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know 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 they signed their name thereto by like order.

[Signature of Notary Public]

261.151. 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 [name of state] 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 South Carolina, 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 $[insert amount]

[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 section 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:

(a) 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;

(b) 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

(c) 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 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 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 ten (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 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 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 set forth above. The parties below certify that the wording of this Agreement is identical to the wording specified in section 261.151 Appendix M as such regulations were constituted on the date set forth above.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

261.151. APPENDIX M-2

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 they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know 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 they signed their name thereto by like order.

[Signature of Notary Public]

Add 61-79.261 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 section 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 ten (10) percent 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 fifteen (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 R.61-79.261 subparts AA, BB, and CC.

Add 61-79.261 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 section 261.4(a)(27).

(b) Tank systems, including sumps, as defined in section 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 section 261.193(a).

261.191. Assessment of existing tank system's integrity.

(a) Tank systems must meet the secondary containment requirements of section 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 section 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 twenty-four (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 (1) 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 one hundred (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 twenty-five-year, twenty-four-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 one hundred (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 twenty-five-year, twenty-four-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 twenty-four (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 section 261.196 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 twenty-four (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 twenty-four (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 twenty-four (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 one (1) pound, and

(ii) Immediately contained and cleaned up.

(3) Within thirty (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 thirty (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 section 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 section 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 section 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 section 261.196: EPA 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 section 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 ninety (90) days after the unit ceases to operate under the remanufacturing exclusion at section 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.61-79.124, 261 through 266, 268, 270, and 271, 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 section 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 R.61-79.261 subparts AA, BB, and CC.

Add 61-79.261 Subpart K and reserve:

Subpart K: [Reserved]

Add 61-79.261 Subpart L and reserve:

Subpart L: [Reserved]

Add 61-79.261 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 section 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 that accumulates six thousand (6000) kilograms or less of hazardous secondary material at any time must comply with sections 261.410 and 261.411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates more than six thousand (6000) kilograms of hazardous secondary material at any time must comply with sections 261.410 and 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 (1) employee on the premises while the facility is operating, 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, must be immediately accessible 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 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 must attempt to make the following arrangements, as appropriate for the type of waste handled at the 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 (1) 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 must document the refusal in the operating record.

261.411. Emergency procedures for facilities generating or accumulating 6000 kilograms or less of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates six thousand (6000) kilograms or less of hazardous secondary material must comply with the following requirements:

(a) At all times there must be at least one (1) 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 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 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 has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility must immediately notify the National Response Center (using their twenty-four-hour toll free number 800/424-8802). The report must include the following information:

(i) The name, address, and 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 kilograms of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates more than six thousand (6000) kilograms 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 that accumulates more than six thousand (6000) kilograms 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 accumulating more than six thousand (6000) kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasure (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, they need only to 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 may develop one (1) 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-South Carolina Hazardous Waste Management provisions in an integrated contingency plan, the changes do not trigger the need for a South Carolina Hazardous Waste Management 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 section 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 (1) 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 (1) 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 specified 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 the 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. This may be done 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, the findings must be reported as follows:

(i) If the assessment indicates that evacuation of local areas may be advisable, appropriate local authorities must be immediately notified. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The government official designated as the on-scene coordinator for that geographical area or the National Response Center (using their twenty-four (24)-hour toll free number 800/424-8802) must be immediately notified. 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 section 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, 263, and 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 fifteen (15) days after the incident, a written report must be submitted 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.

Add 61-79.261 Subparts N to Z and reserve:

Subpart N-Z: [Reserved]

Add 61-79.261 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 section 261.4(a)(27) with concentrations of at least ten (10) parts per million by weight (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 South Carolina Hazardous Waste Management Act and R.61-79.260 through 266.

"Air stripping operation" is a desorption operation employed to transfer one (1) 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 (2) 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 fifteen (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 (1) or more feed stream(s) into two (2) 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 (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) 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 (1) 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 twenty-four (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 (1) or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C), the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C) is equal to or greater than twenty (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 five (5) kilopascals (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 (1) side of the valve seat in contact with hazardous secondary material and one (1) 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 (2) 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 (1) 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 ten (10) parts per million by weight (ppmw) shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kilograms/hour (3 lbs/h) and 2.8 Megagram/year (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 ninety-five (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 section 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 section 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 section 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 ninety-five (95) weight percent or greater unless the total organic emission limits of section 261.1032(a)(1) for all affected process vents can be attained at an efficiency less than ninety-five (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 ninety-five (95) weight percent or greater; to achieve a total organic compound concentration of twenty (20) ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three (3) percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of seven hundred and sixty degrees Celsius (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 five (5) minutes during any two (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 megajoules (MJ)/standard cubic meter (scm) (300 British thermal units (Btu)/standard cubic foot (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 meters/second (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 (1000 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 two (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 twenty-five degrees Celsius (25°C) and 760 millimeters of Mercury (mm Hg), but the standard temperature for determining the volume corresponding to one (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 section 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 section 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:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

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 degrees Celsius (◦C) or ±0.5 degrees Celsius (°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 (one) percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 degrees Celsius (°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 forty-four (44) Megawatts (MW), a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 (one) percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 degrees Celsius (°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 forty-four (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 (one) percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 degrees Celsius (°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 section 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 twenty (20) percent of the time required to consume the total carbon working capacity established as a requirement of section 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 section 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 five hundred (500) ppmv above background as determined by the procedure in section 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 section 261.1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than five hundred (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 (2) 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 section 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 section 261.1034(b) 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 section 261.1035.

(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 section 261.1035.

(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 five hundred (500) ppmv above background, shall be controlled as soon as practicable, but not later than fifteen (15) 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 five (5) 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 section 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.61-79.270 which implements the requirements of 40 CFR 261 subpart X; 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 R.61-79.261 or 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.61-79.270 which implements the requirements of 40 CFR 261 subpart O; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 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.61-79.270 which implements the requirements of R.61-79.266 subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of R.61-79.266 subpart H.

(o) Any components of a closed-vent system that are designated, as described in section 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 section 261.1033(l) of this subpart, the test 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 ten (10) parts per million (ppm) of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (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 five hundred (500) ppm for determining compliance.

(c) Performance tests to determine compliance with section 261.1032(a) and with the total organic compound concentration limit of section 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 twenty (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 one (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.

$$E_K = Q_{2sd}\{\sum_{i=1}^{n} C_i MW_i\}[0.0416][10^{-6}]$$

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 ten (10) ppmw using one of the following two (2) 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 (4) 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 section 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 (4) 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 ten (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 ten (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 ten (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 ten (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 (1) 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 section 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 section 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 section 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 section 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 section 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 section 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 ninety-five (95) percent or greater unless the total organic concentration limit of section 261.1032(a) is achieved at an efficiency less than ninety-five (95) weight percent or the total organic emission limits of section 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 ninety-five (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 section 261.1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by section 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 seconds at a minimum temperature of seven hundred and sixty degrees Celsius (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 ninety-five (95) weight percent or greater, period when the combustion zone temperature is more than twenty-eight degrees Celsius (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 twenty-eight degrees Celsius (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 eighty (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 twenty-eight degrees Celsius (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 section 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 twenty (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 section 261.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than six degrees Celsius (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 six degrees Celsius (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 section 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 twenty (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 section 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 section 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 section 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 section 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 section 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 section 261.1033(l), 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 fifteen (15) 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 three (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 section 261.1032, including supporting documentation as required by section 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. [Reserved]

261.1037. [Reserved]

261.1038. [Reserved]

261.1039. [Reserved]

261.1040. [Reserved]

261.1041. [Reserved]

261.1042. [Reserved]

261.1043. [Reserved]

261.1044. [Reserved]

261.1045. [Reserved]

261.1046. [Reserved]

261.1047. [Reserved]

261.1048. [Reserved]

261.1049. [Reserved]

Add 61-79.261 Subpart BB to read:

Subpart BB: Air Emission Standards for Equipment Leaks

261.1050. Applicability.

The regulations in this subpart apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at section 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 section 261.1031, the South Carolina Hazardous Waste Management Act and R.61-79.260 through 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 section 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 ten thousand (10,000) parts per million (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 fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than five (5) 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 section 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 ten (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 fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than five (5) calendar days after each leak is detected.

(e) Any pump that is designated, as described in section 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than five hundred (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 five hundred (500) ppm above background as measured by the methods specified in section 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 section 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;

(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 section 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 ten (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 fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than five (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 section 261.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in section 261.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than five hundred (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 five hundred (500) ppm above background, as measured by the method specified in section 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 five hundred (500) ppm above background, as measured by the method specified in section 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 five hundred (500) ppm above background, as soon as practicable, but no later than five (5) calendar days after each pressure release, except as provided in section 261.1059.

(2) No later than five (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 five hundred (500) ppm above background, as measured by the method specified in section 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 section 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 (1) 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 sections 261.1084 through 264.1086 of this subpart or a control device that complies with the requirements of section 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 section 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 sections 261.1061 and 261.1062.

(b) If an instrument reading of ten thousand (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 (2) successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than fifteen (15) calendar days after the leak is detected, except as provided in section 261.1059.

(2) A first attempt at repair shall be made no later than five (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 section 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than five hundred (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 five hundred (500) ppm above background as determined by the method specified in section 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 section 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 section 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 two (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 (5) days by the method specified in section 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 ten thousand (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 fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) The first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under section 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 section 261.1064.

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 ten (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 section 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 six (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 six (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 section 261.1033.

(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 thirty (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 thirty (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 thirty (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 thirty (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 section 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 two (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 two (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 section 261.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in section 261.1057 within the hazardous secondary material management unit shall be monitored within one (1) week by the methods specified in section 261.1063(b).

(2) If an instrument reading of ten thousand (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 section 261.1057 for which leaks are detected by the total number of valves subject to the requirements in section 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 section 261.1057 may elect for all valves within a hazardous secondary material management unit to comply with one (1) 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 section 261.1057, except as described in paragraphs (b)(2) and (3) of this section.

(2) After two (2) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one (1) of the quarterly leak detection periods (i.e., monitor for leaks once every six (6) months) for the valves subject to the requirements in section 261.1057 of this subpart.

(3) After five (5) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three (3) of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in section 261.1057 of this subpart.

(4) If the percentage of valves leaking is greater than two (2) percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in section 261.1057, but may again elect to use this section after meeting the requirements of section 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 sections 261.1052 through 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 ten (10) ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (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 sections 261.1052(e), 261.1053(i), 261.1054, and 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 five hundred (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 ten (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 section 260.11);

(2) Method 9060A (incorporated by reference under section 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 ten (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 ten (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 ten (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 section 260.11).

(i) Performance tests to determine if a control device achieves ninety-five (95) weight percent organic emission reduction shall comply with the procedures of section 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 (1) 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 (1) 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 R.61-79.261 subpart BB 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 section 261.1033(a)(2), an implementation schedule as specified in section 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 section 261.1035(b)(3).

(4) Documentation of compliance with section 261.1060, including the detailed design documentation or performance test results specified in section 261.1035(b)(4).

(c) When each leak is detected as specified in sections 261.1052, 261.1053, 261.1057, and 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 section 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 (2) successive months as specified in section 261.1057(c) and no leak has been detected during those two (2) months.

(d) When each leak is detected as specified in sections 261.1052, 261.1053, 261.1057, and 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 section 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 section 261.1063(b) after each repair attempt is equal to or greater than ten thousand (10,000) ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen (15) calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with section 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 fifteen (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 section 261.1060 shall be recorded and kept up-to-date at the facility as specified in section 261.1035(c). Design documentation is specified in section 261.1035(c)(1) and (2) and monitoring, operating, and inspection information in section 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 sections 261.1052 through 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 five hundred (500) ppm above background, under the provisions of sections 261.1052(e), 261.1053(i), and 261.1057(f).

(ii) The designation of this equipment as subject to the requirements of sections 261.1052(e), 261.1053(i), or 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 section 261.1054(a).

(4)(i) The dates of each compliance test required in sections 261.1052(e), 261.1053(i), 261.1054, and 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 ten (10) percent by weight for less than three hundred (300) hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of section 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 section 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 the facility:

(1) Criteria required in sections 261.1052(d)(5)(ii) and 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 sections 261.1052 through 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 sections 261.1052 through 261.1060. The record shall include supporting documentation as required by section 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 sections 261.1052 through 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 (3) 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 section 261.1064, 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.

261.1065. [Reserved]

261.1066. [Reserved]

261.1067. [Reserved]

261.1068. [Reserved]

261.1069. [Reserved]

261.1070. [Reserved]

261.1071. [Reserved]

261.1072. [Reserved]

261.1073. [Reserved]

261.1074. [Reserved]

261.1075. [Reserved]

261.1076. [Reserved]

261.1077. [Reserved]

261.1078. [Reserved]

261.1079. [Reserved]

Add 61-79.261 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 section 261.4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of 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 South Carolina Hazardous Waste Management Act and R.61-79.260 through 266.

"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 section 261.1084.

"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 one hundred nineteen (119) gallons in size and no more than three (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 one hundred nineteen (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 (1) or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C); and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than twenty (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 section 261.1084 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 section 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 section 261.1084(c).

"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 section 261.1084(d).

"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 section 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 (1) 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 by weight (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of section 261.1084. 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 twenty-five degrees Celsius (25°C) 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 sections 261.1084 through 261.1087, 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 sections 261.1084 through 261.1087, 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 five hundred (500) parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in section 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 twelve (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 section 261.1082(c)(1)

from using air emission controls in accordance with standards specified in sections 261.1084 through 261.1087, 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 section 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 section 261.1082.

(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 one (1) year.

(B) A sufficient number of samples, but no less than four (4) 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 (1) 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 (1) 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 twenty-five degrees Celsius (25°C). 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°C). 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°C) 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°C), 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

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i-1}^{n} (Q_i \times C_i)$$

Where:

$\bar{C}$ = 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 one (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 twenty-five degrees Celsius (25°C).

(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 remanufacture 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 (1) 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 section 261.1084(c).

(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 one (1) of the appropriate 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 section 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92 (incorporated by reference—refer to section 260.11); 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 section 261.1085(b)(1)(i) 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 ten (10) ppmv hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (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 five hundred (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 five hundred (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 ten thousand (10,000) ppmw. If the difference is less than ten thousand (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 section 261.1082(b) 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 one hundred fifty-one cubic meters (151 m^3), the maximum organic vapor pressure limit for the tank is 5.2 kilopascals (kPa).

(B) For a tank design capacity equal to or greater than seventy-five (75) m^3 but less than one hundred fifty-one (151) m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than seventy-five (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 section 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 section 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 section 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 (1) 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 section 261.1081; or

(B) Two (2) 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 ninety (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 ten (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 twelve (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 ten (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 (2) 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 (5) 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 thirty (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 thirty (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 (7) 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 (7) 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 section 261.1089(b).

(4) Safety devices, as defined in section 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 (2) 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 section 261.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed two hundred twelve square centimeters (212 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 sixty-one (61) cm 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 cm^2 per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 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 ninety (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 sixty (60) calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five (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 sixty (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 one (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 (1) 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 section 261.1089(b).

(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 section 261.1089(b).

(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 the Department at least thirty (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 thirty (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 thirty (30) calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than seven (7) 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 (7) calendar days before refilling the tank.

(4) Safety devices, as defined in section 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 section 261.1087.

(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 section 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 section 261.1087.

(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 section 261.1089(b).

(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 section 261.1083(d).

(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 section 261.1081, 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 section 261.1087.

(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 section 261.1087.

(3) Safety devices, as defined in section 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 section 261.1087.

(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 section 261.1082(c)(1) 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 section 261.1082(c)(2).

(iii) The hazardous secondary material meets the requirements of section 261.1082(c)(4).

(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 five (5) calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five (45) calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond forty-five (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 one (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 section 261.1082(b) 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 cubic meters (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 fifteen (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 fifteen (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 section 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 twenty-four (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 one (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 twelve (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 twenty-four (24) hours after detection and repair shall be completed as soon as possible but no later than five (5) calendar days after detection. If repair of a defect cannot be completed within five (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 section 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 twelve (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 fifteen (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 fifteen (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 section 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 twenty-four (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 one (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 twelve (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 twenty-four (24) hours after detection, and repair shall be completed as soon as possible but no later than five (5) calendar days after detection. If repair of a defect cannot be completed within five (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 section 261.1087.

(3) Safety devices, as defined in section 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 section 261.1087.

(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 section 261.1089(d).

(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 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 section 261.1083(d) 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 five (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 section 261.1033(k).

(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 section 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 ninety-five (95) percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of section 261.1033(c); or

(iii) A flare designed and operated in accordance with the requirements of section 261.1033(d).

(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 two hundred forty (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 two hundred forty (240) hours per year) by recording the information specified in section 261.1089(e)(1)(v).

(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 section 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 section 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 secition 261.1033(j).

(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 forty-four (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 section 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 section 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 section 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 section 261.1033(f)(2) and (l). The readings from each monitoring device required by section 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 sections 261.1084 through 261.1087.

(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 three (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 sections 261.1084 through 261.1087 in accordance with the conditions specified in section 261.1080(b)(7) or (d), 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 section 261.1084 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 section 261.1084, 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 section 261.1084 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 section 261.1084, 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 section 261.1084(c) 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 section 261.1084(c). 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 section 261.1084(e) 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 section 261.1084(f) 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 section 261.1084(f)(3) 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 section 261.1084(f)(1), 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 section 261.1084(i) 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 section 261.1086 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 section 261.1087 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 section 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 section 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 section 261.1035(b)(3) and all test results.

(iv) Information as required by sections 261.1035(c)(1) and 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 section 261.1087(c)(1)(i), (ii), or (iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next six (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 six (6)-month period. This description shall include the type of maintenance performed and the total number of hours during those six (6) months that the control device did not meet the requirements of section 261.1087(c)(1)(i), (ii), or (iii), 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 section 261.1087(c)(1)(i), (ii), or (iii), 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 section 261.1087(c)(3)(ii).

(f)(1) 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 section 261.1082(c)(1) or (c)(2)(i) through (vi), 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 section 261.1083.

(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 sections 261.1084(l) or 261.1085(g) 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.

261.1090. [Reserved]

Revise 61-79.262.21(b)(8) to read:

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this section and that it will notify the EPA Director of ~~OSW~~the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as it becomes known.

Revise 61-79.262.21(f)(2) to read:

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

Revise 61-79.262.21(h)(3) to read:

(3) If a registrant would like to change paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples

printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its ~~decisions~~decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

Revise 61-79.262.33 to read:

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F and ~~the~~in accordance with applicable S. C. Public Service Commission regulations. ~~If placards are not required a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1)~~

Revise 61-79.262.42(a) to read:

(a)(1) A generator with one thousand (1,000) kilograms or greater of hazardous waste in a calendar month, or greater than one (1) kg of acute hazardous waste listed in section 261.31 or 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of one thousand (1,000) kilograms or greater of hazardous waste in a calendar month, or greater than one (1) kg of acute hazardous waste listed in section 261.31 or 261.33(e) in a calendar month, must submit an Exception Report to the ~~Agency~~Department if ~~he~~they ~~has~~have not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The Exception Report must include:

Revise 61-79.262.206(b) to read:

(b) Management of Containers in the Laboratory: An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

Revise 61-79.262.212(e)(3) to read:

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to ~~261.5(c) and (d)~~section 262.13 in the calendar month that the hazardous waste determination was made, and

Revise 61-79.263.20(a)(1) to read:

(a)(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest ~~signed in accordance with the provisions of R.61-79.262, subpart B~~form (EPA Form 8700-22, and if necessary, EPA Form 8700-22A) signed in accordance with the requirement of section 262.23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with section 262.20(a)(3), and signed with a valid and enforceable electronic signature as described in section 262.25.

Revise 61-79.264.72(c) to read:

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator must immediately submit to the ~~Regional Administrator~~Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Revise 61-79.264.76(a) to read:

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by section 263.20(e)~~ of this chapter~~, and if the waste is not excluded from the manifest requirement by~~ 261.5 of~~ this chapter, then the owner or operator must prepare and submit a letter to the ~~Agency~~Department within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

Revise 61-79.264.147(h)(1) to read:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter ~~or~~of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit the Department.

Revise 61-79.264.151(a)(1) to read:

(a)(1) A ~~standby~~trust agreement for a trust fund, as specified in sections 264.143(a) or 264.145(a) or 265.143(a) or 265.145(a), must be worded as noted in section 264.151 Appendix A(1) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151(k) to read:

(k) A letter of credit, as specified in section 264.147(~~i~~h) or 265.147(~~i~~h), must be worded as noted in section 264.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151(l) to read:

(l) A surety bond, as specified in section 264.147(~~h~~i) or 265.147(~~h~~i) of this chapter, must be worded as noted in section 264.151 Appendix L, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151 Appendix K to read:

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:

Revise 61-79.264.151 Appendix M, Section 8(c) to read:

(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~~depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such ~~depositary~~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;

Revise 61-79.264.151 Appendix N, Section 3(c)(1) to read:

(1) An employee ~~or~~of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

Revise 61-79.264.151 Appendix N, Section 3(e)(3) to read:

(3) Property loaned ~~to~~by [insert Grantor];

Revise 61-79.264.151 Appendix N, Section 8(c) to read:

(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~~depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such ~~depositary~~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;

Revise 61-79.264.151 Appendix N, Section 12 to read:

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 trustees 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 ten (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.

Revise 61-79.264.151 Appendix N, Section 16 to read:

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 ~~reasonable~~reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Add 61-79.264.172 to read:

264.172. Compatibility of waste with containers.

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

Revise 61-79.264.193(e)(2)(v)(B) to read:

(B) Meets the definition of reactive waste under ~~R.61-79.261.21~~section 261.23, and may form an ignitable or explosive vapor; and

Revise 61-79.264.221(e)(2)(i)(B) to read:

(B) The monofill is located more than one-quarter mile from an "underground source of drinking water"~~,~~ (as that term is defined in section 270.2); and

Revise 61-79.265.56(b) to read:

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and ~~area~~areal extent of any released materials and notify the Department per section 265.56(d)(2). ~~He~~They may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

Revise 61-79.265.76(a) to read:

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by section 263.20(e), and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the ~~Regional Administrator~~Department within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

Revise 61-79.265.255(b) to read:

(b) The Department shall approve an action leakage rate for waste pile~~s~~ units subject to section 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one (1) foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from

siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

Revise 61-79.265.314(f)(2) to read:

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in ~~40 CFR~~section 270.2).

Revise 61-79.266.100(c)(3) to read:

(3) Hazardous wastes that are exempt from regulation under sections 261.4 and 261.6(a)(3)(iii) and (vi), and hazardous wastes that are subject to the special requirements for ~~conditionally exempt~~very small quantity generators under ~~261.5~~section 262.14; and

Revise 61-79.266.108(c) Note to read:

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under ~~261.5 of this chapter~~section 262.16 may be burned in an offsite device under the exemption provided by 266.108, but must be included in the quantity determination for the exemption.

Revise 61-79.270.14(a) to read:

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in sections 270.14 through 270.29 applicable to the facility. The part B information requirements presented in sections 270.14 through 270.29 reflect the standards promulgated in R.61-79.264. These information requirements are necessary in order for the Department to determine compliance with the ~~part 264~~R.61-79.264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Department may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Department and signed in accordance with the requirements in section 270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in section 270.28 is required in part B of the permit application.

Revise 61-79.270.26(c)(15) to read:

(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of section 264.573.

ATTACHMENT B

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Ann. Section 44-56-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-79, Hazardous Waste Management Regulations. Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on April 22, 2019, the close of the draft comment period.

Synopsis:

The Department proposes adopting the "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, at 80 FR 1694-1814 and May 30, 2018, at 83 FR 24664-24671. This United States Environmental Protection Agency ("EPA") rule revised several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to encourage reclamation of hazardous secondary materials in an environmentally safe manner. The federal rule has made the recycling-related provisions less stringent than previous standards. Because the standards are now less stringent than what states have been enforcing, the EPA has made state adoption optional. The proposed amendments are described in EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion). These checklists may be found at https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservationand-recovery-act.

The Department also proposes amending R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, updating definitions, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(A), requires General Assembly review of these proposed amendments.

(x) ACTION/DECISION
( ) INFORMATION

Date: May 9, 2019

To: S.C. Board of Health and Environmental Control

From: Bureau of Land and Waste Management

Re: Notice of Proposed Regulation Amending R.61-79, Hazardous Waste Management Regulations.

I. Introduction

The Bureau of Land and Waste Management ("Bureau") proposes the attached Notice of Proposed Regulation amending R.61-79, *Hazardous Waste Management Regulations*, for publication in the May 24, 2019, *South Carolina State Register* ("*State Register*"). Legal authority resides in the South Carolina Hazardous Waste Management Act, S.C. Code Ann. Section 44-56-30, which authorizes the Department of Health and Environmental Control ("Department") to promulgate hazardous waste management regulations, procedures, or standards as may be necessary to protect human health and the environment. The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department proposes the amendments for compliance with federal law.

II. Facts

1. The Department proposes amending R.61-79, *Hazardous Waste Management Regulations*, to adopt three final rules published in the Federal Register by the United States Environmental Protection Agency ("EPA"). The EPA requires state adoption of these rules, as the rules do not revise existing standards to make them less stringent. The rules are as follows: the "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," published on May 30, 2018, at 83 FR 24664-24671; the "Confidentiality Determinations for Hazardous Waste Export and Import Documents," published on December 26, 2017, at 82 FR 60894-60901; and the "Hazardous Waste Electronic Manifest System User Fee; Final Rule," published on January 3, 2018, at 83 FR 420-462.

2. The Department had a Notice of Drafting published in the March 22, 2019, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. The Department did not receive any comments during the public comment period.

3. Appropriate Department staff conducted an internal review of the proposed amendments on March 28, 2019.

4. The Department conducted an outreach meeting on May 3, 2019, with the Solid Waste Ad Hoc group, members from the SC Chamber Environmental Technical Committee (specifically the Solid Waste subcommittee), and the South Carolina Manufacturers Association. The Department also published a general summary of the proposed amendments on the DHEC Regulation Development Update webpage and provided notice to interested parties *via* email.

III. Request for Approval

The Bureau respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the May 24, 2019, *State Register*.

Henry Porter
Bureau Chief

Myra Reece
Director

Attachments:
A. Notice of Proposed Regulation
B. Notice of Drafting published in the March 22, 2019, *State Register*

ATTACHMENT A

STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR R.61-79, Hazardous Waste Management Regulations

May 9, 2019

Document No. _____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-56-30

61-79. Hazardous Waste Management Regulations.

Preamble:

The Department of Health and Environmental Control ("Department") proposes amending R.61-79 to adopt three final rules published in the Federal Register by the United States Environmental Protection Agency ("EPA"). The EPA requires state adoption of these rules, as the rules do not revise existing standards to make them less stringent. The "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," published on May 30, 2018, at 83 FR 24664-24671, revises several recycling-related provisions associated with the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") and portions of the original rule that were vacated by the United States Court of Appeals for the D.C. Circuit. The "Confidentiality Determinations for Hazardous Waste Export and Import Documents," published on December 26, 2017, at 82 FR 60894-60901, amends existing export and import hazardous waste regulations by applying a confidentiality determination for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes. The "Hazardous Waste Electronic Manifest System User Fee; Final Rule," published on January 3, 2018, at 83 FR 420-462, establishes the methodology the EPA uses to determine and revise user fees applicable to the electronic and paper manifest to be submitted to the national Hazardous Waste Electronic Manifest System that became operational nationwide on June 30, 2018. Adoption of this rule is required to comply with federal law and will bring R.61-79 into conformity with the federal regulations.

The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department proposes the amendments for compliance with federal law.

The Department had a Notice of Drafting published in the March 22, 2019, South Carolina State Register.

Section-by-Section Discussion of Proposed Amendments:

Revise 61-79.260. Table of Contents.

260.2(b). Amend to clarify where information for claims of business confidentiality are located and clarify language.

260.2(d). Add new language to describe cathode ray tube export documentation in relation to claims of business confidentiality.

260.4. Add language to describe manifest copy submission requirements for certain interstate waste shipments.

260.5. Add language to describe applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

260.31(c)(3). Revise to add punctuation.

260.31(c)(6). Remove item.

260.42(a). Revise to add a reference section and replace “Regional Administrator” with “Department”.

260.42(a)(5). Amend to clarify information required from facilities managing hazardous secondary materials.

260.42(a)(6). Add new language to include new information required from facilities managing hazardous secondary materials.

260.42(a)(7) through (10). Revise to change numerical organization.

260.43(a). Amend to add new requirement phrase on recycling of hazardous secondary materials.

260.43(b). Amend to remove “reserved” and add new language to describe the factors in determining the legitimacy of a specific recycling activity.

261.2(a)(2)(ii). Remove and reserve.

261.39(a)(5)(iv). Amend to remove last sentence.

Revise 61-79.262. Table of Contents.

262.20(a)(1) and (2). Amend to remove the language referencing the appendix to part 262 and 262.34.

262.21(f)(5). Amend to change the required number of manifest and continuation sheet copies.

262.21(f)(6). Amend to re-number the required items.

262.21(f)(7). Amend to add new introductory language on the instructions for the manifest and continuation sheet forms and clarify instructions. Remove reference to appendix to part 262.

262.21(f)(8). Add language to describe a requirement of the manifest and continuation sheet.

262.24(c). Amend to clarify restriction on use of electronic manifests and add exceptions (1) and (2).

262.24(e). Amend to remove language referencing the appendix to part 262.

262.24(g). Remove and reserve.

262.24(h). Add language to describe post-receipt manifest data corrections.

Appendix to Part 262. Remove.

263.20(a)(8). Remove and reserve.

263.20(a)(9). Add language to describe post-receipt manifest data corrections

263.21(a). Amend to clarify where exceptions are located in the regulations.

263.21(b). Amend to add and clarify language related to emergency conditions for hazardous waste facilities.

263.21(c). Add language to describe transporter requirements if hazardous waste is rejected at a designated facility.

Revise 61-79.264. Table of Contents.

264.71(a)(2). Amend to clarify what the owner, operator, or agent must do after receiving a hazardous waste shipment manifest.

264.71(j). Amend to clarify and add language related to the imposition of user fees for electronic manifest use.

264.71(l). Add language to describe post-receipt manifest date corrections in the manifest system.

264.1086(c)(4)(i). Amend to remove language referencing the appendix to part 262.

264.1086(d)(4)(i). Amend to remove language referencing the appendix to part 262.

264 Subpart FF. Add language to describe fees for the electronic hazardous waste manifest program as standards for owners and operators of hazardous waste treatment, storage, and disposal facilities.

Revise 61-79.265. Table of Contents.

265.71(a)(2)(i). Amend to remove “by hand”.

265.71(a)(2)(iv). Amend to specify page number on the manifest and change punctuation.

265.71(a)(2)(v). Amend to add language related to paper manifest submission requirements.

265.71(j)(1) and (2). Amend to clarify the imposition of user fees for electronic manifest use.

265.71(l). Add language to describe using the manifest system for post-receipt manifest data corrections

265.1087(c)(4)(i). Amend to remove language referencing the appendix to part 262.

265.1087(d)(4)(i). Amend to remove language referencing the appendix to part 262.

265 Subpart FF. Add language to describe fees for the electronic hazardous waste manifest program as the interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on June 24, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendment during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: http://www.scdhec.gov/Agency/docs/AGENDA.PDF.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/.

Statement of Need and Reasonableness

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-79, Hazardous Waste Management Regulations

Purpose: The purpose of these amendments is to maintain state consistency with the following EPA regulations published in the Federal Register: "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," on May 30, 2018, at 83 FR 24664-24671; "Confidentiality Determinations for Hazardous Waste Export and Import Documents," on December 26, 2017, at 82 FR 60894-60901; and "Hazardous Waste Electronic Manifest System User Fee; Final Rule," on January 3, 2018, at 83 FR 420-462.

Legal Authority: 1976 Code Section 44-56-30

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

The Department proposes adopting three final rules published in the Federal Register by the EPA. The "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," published on May 30, 2018, at 83 FR 24664-24671, revises several recycling-related provisions associated with the definition of solid waste under Subtitle C of RCRA and portions of the original rule that were vacated by the United States Court of Appeals for the D.C. Circuit. The "Confidentiality Determinations for Hazardous Waste Export and Import Documents," published on

December 26, 2017, at 82 FR 60894-60901, amends existing export and import hazardous waste regulations from and into the United States by applying a confidentiality determination for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes. The "Hazardous Waste Electronic Manifest System User Fee; Final Rule," published on January 3, 2018, at 83 FR 420-462, establishes the methodology the EPA uses to determine and revise user fees applicable to the electronic and paper manifest to be submitted to the national Hazardous Waste Electronic Manifest System that became operational nationwide on June 30, 2018. Adoption of these rules is required to comply with federal law and will bring R.61-79 into conformity with the federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

These amendments are exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the proposed changes are necessary to maintain compliance with federal law.

The EPA estimates in the Federal Register, Volume 80, Number 8, January 13, 2015 on page 1769 that the Definition of Solid Waste Rule will result in cost savings for the regulated community due to increased recycling of hazardous wastes. Likewise, in the Federal Register, Volume 83, Number 2, dated January 3, 2018, page 446, the EPA estimates that the Hazardous Waste Electronic Manifest User Fee Rule will result in cost savings for the regulated community. Finally, in the Federal Register, Volume 82, Number 246, dated December 26, 2017, page 60898, the EPA estimates that the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule will result in greater efficiencies and cost savings for the regulated community.

UNCERTAINTIES OF ESTIMATES:

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

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The proposed revisions to R.61-79 will provide continued protection of the environment and human health in accordance with updates to federal law.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If South Carolina does not adopt these amendments, the EPA's delegation of authority to the state to implement environmental protection programs would be compromised. As a delegated state program, the EPA requires South Carolina's regulations be at least as stringent as the federal regulations. Adoption of these proposed revisions will ensure equivalency with federal requirements.

Text:

~~Indicates Matter Stricken~~
Indicates New Matter

61-79. Hazardous Waste Management Regulations.

Statutory Authority: 1976 Code Ann. Section 44-56-30

Revise 61-79.260. Table of Contents, Subpart A to read:

Subpart A. General

260.1. Purpose, scope, and applicability.
260.2. Availability of information; confidentiality of information.
260.3. Use of number and gender.
260.4. Manifest copy submission requirements for certain interstate waste shipments.
260.5. Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

Revise 61-79.260.2(b) to read:

(b) ~~A~~Except as provided under paragraphs (c) and (d) of this section, any person who submits information to the Department in accordance with R.61-79.260 through R.61-79.266 and R.61-79.268 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in S.C. Code Ann Sections 30-4-10 et seq. and 40 CFR 2.203(b). Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the provisions contained in ~~the Freedom of Information Acts SC~~S.C. Code Ann Sections 30-4-10 et seq., and by means of the procedures, set forth in 40 CFR ~~Chapter 1,~~ part 2, subpart B~~, except that information required by 262.53(a) and 262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in the transit and receiving or importing country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the Department, it may be made available to the public without further notice to the person submitting it (revised 12/92; 12/93)~~of this chapter.

Add 61-79.260.2(d) to read:

(d)(1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

Add 61-79.260.4. to read:

260.4. Manifest copy submission requirements for certain interstate waste shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61-79.264 subpart FF.

Add 61-79.260.5. to read:

260.5. Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

(a) For purposes of this section, "state-only regulated waste" means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of sections 264.71 (use of the manifest) and 264.72 (manifest discrepancies); and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61-79.264 subpart FF.

Revise 61-79.260.31(c)(3) through (c)(6) to read:

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and

(5) Whether the partially-reclaimed material is handled to minimize loss.

~~(6) Other relevant factors.~~

Revise 61-79.260.42(a) to read:

(a) Facilities managing hazardous secondary materials under ~~S~~sections 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27) must send a notification prior to operating under the regulatory

provision and by March 1 of each even-numbered year thereafter to the ~~Regional Administrator~~Department using EPA Form 8700-12 that includes the following information:

(1) The name, address, and EPA ID number (if applicable) of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials will be managed;

(5) ~~When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;~~For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with section 261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

(6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(~~6~~7) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(~~7~~8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(~~8~~9) The quantity of each hazardous secondary material to be managed annually; and

(~~9~~10) The certification (included in EPA Form 8700-12) signed and dated by an authorized representative of the facility.

Revise 61-79.260.43(a) to read:

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph and must consider the requirements of paragraph (b) of this section.

Revise 61-79.260.43(b) to read:

(b) ~~[Reserved]~~The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) contain significant concentrations of any hazardous constituents found in R.61-79.261 appendix VIII that are not found in analogous products; or

(ii) contain concentrations of hazardous constituents found in R.61-79.264 appendix VIII at levels that are significantly elevated from those found in analogous products, or

(iii) exhibit a hazardous characteristic (as defined in R.61-79.261 subpart C) that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

Revise 61-79.261.2(a)(2)(ii) to remove and reserve:

(ii) ~~Recycled, as explained in paragraph (c) of this section; or~~[Reserved]

Revise 61-79.261.39(a)(5)(iv) to read:

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. ~~Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.~~

Remove Appendix from 61-79.262. Table of Contents:

~~Appendix TO PART 262—UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700-22 AND 8700-22A AND THEIR INSTRUCTIONS) U.S. EPA Form 8700-22~~

Revise 61-79.262.20(a)(1) and (2) to read:

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility ~~who~~that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A~~, according to the instructions included in the Appendix to this part~~.

(2) The revised manifest form and procedures in sections 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, ~~262.34,~~ 262.54, and 262.60~~, and the Appendix to 262,~~ shall not apply until September 5, 2006. The manifest form and procedures in sections 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, and 262.60~~, and the Appendix to 262, contained in the parts 260 to 265,~~ edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

Revise 61-79.262.21(f)(5) to read:

(5) The manifest and continuation sheet must be printed as ~~six~~five (5) copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all ~~six~~five (5) copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

Revise 61-79.262.21(f)(6)(i) through (vi) to read:

(i) Page 1~~:~~ (top copy): "Designated facility to ~~destination state (if required).~~EPA's e-Manifest system";

(ii) Page 2: "Designated facility to generator ~~state (if required)".~~";

(iii) Page 3: "Designated facility ~~to generator~~copy"~~.~~;

(iv) Page 4: "~~Designated facility's~~Transporter copy"~~.~~;

(v) Page 5 (bottom copy): "~~Transporter's~~Generator's initial copy".

~~(vi) Page 6: (bottom copy) "Generator's initial copy."~~

Revise 61-79.262.21(f)(7) to read:

(7) The instructions for the manifest form (EPA Form 8700-22) and the manifest continuation sheet (EPA Form 8700-22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050-0039 and published to the e-Manifest program's website. The instructions ~~in the appendix to part 262~~ must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest EPA Form 8700-22:

(A) The "Instructions for Generators" on Copy ~~6~~5;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy ~~5~~4; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy ~~4~~3.

(ii) Manifest Form 8700-22A:

(A) The "Instructions for Generators" on Copy ~~6~~5;

(B) The "Instructions for Transporters" on Copy ~~5~~4; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy ~~4~~3.

Add 61-79.262.21(f)(8) to read:

(8) The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font: "If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side."

Revise 61-79.262.24(c) to read:

(c) Restriction on use of electronic manifests. A generator may ~~prepare~~use an electronic manifest for the tracking of ~~hazardous~~ waste shipments involving any RCRA hazardous waste only if it is known at the time

the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest system., except that:

(1) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2) [Reserved]

Revise 61-79.262.24(e) to read:

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to this part, and use these paper forms from this point forward in accordance with the requirements of Ssection 262.23.

Remove 61-79.262.24(g) and reserve:

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time to time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to this part.[Reserved]

Add 61-79.262.24(h) to read:

(h) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in section 264.71(l), which applies to corrections made to either paper or electronic manifest records.

Remove 61-79 Appendix to Part 262:

Appendix TO PART 262—UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700-22 AND 8700-22A AND THEIR INSTRUCTIONS) U.S. EPA Form 8700-22
Read all instructions before completing this form.
1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used—press down hard.
2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.
I. Instructions for Generators
Manifest 8700-22
The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington , DC 20503.

I. Instructions for Generators

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the state generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of ___

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any.

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number must be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

Table I - Types of Containers
BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

Table II - Units of Measure
G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).

Table II - Units of Measure
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the

movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

2. For rejected loads and residues (40 CFR 264.72(d), (e), and (f), or 40 CFR 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized states (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).

4. Owners or operators of facilities located in authorized states (i.e., those states that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their state agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Manifest Continuation Sheet

Instructions – Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used-press down hard.

This form must be used as a continuation sheet to U.S. EPA Form 8700-22 if:

- More than two transporters are to be used to transport the waste; or
- More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the state generator identification number if the generator site does not have an EPA identification number.

Item 22. Page ___

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name –

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter – Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter – Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

~~Refer to the instructions for Item 10 of the manifest for information to be entered.~~
~~**Item 29.** Total Quantity~~
~~Refer to the instructions for Item 11 of the manifest form.~~
~~**Item 30.** Units of Measure (Weight/Volume)~~
~~Refer to the instructions for Item 12 of the manifest form.~~
~~**Item 31**. Waste Codes~~
~~Refer to the instructions for Item 13 of the manifest form.~~
~~**Item 32**. Special Handling Instructions and Additional Information~~
~~Refer to the instructions for Item 14 of the manifest form.~~
~~Transporters~~
~~**Item 33.** Transporter—Acknowledgment of Receipt of Materials~~
~~Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~
~~**Item 34.** Transporter—Acknowledgment of Receipt of Materials~~
~~Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~
~~Owner and Operators of Treatment, Storage, or Disposal Facilities~~
~~**Item 35.** Discrepancy Indication Space~~
~~Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.~~
~~**Item 36**. Hazardous Waste Report Management Method Codes~~
~~For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.~~

Remove 61-79.263.20(a)(8) and reserve:

(8) ~~Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time to time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this Chapter.~~[Reserved]

Revise 61-79.263.20(a)(9) to read:

(9) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in section 264.71(l), which applies to corrections made to either paper or electronic manifest records.

Revise 61-79.263.21(a) to read:

(a) ~~The~~Except as provided in paragraph (b) of this section, the transporter must deliver the entire quantity of hazardous waste which he or she has accepted from a generator or a transporter to:

Revise 61-79.263.21(b) to read:

(b)(1) Emergency condition. If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (2), or (4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further ~~directions~~instructions and must revise the manifest according to the generator's instructions.

(2) ~~If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:~~Transporters without agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) ~~For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 264.72(e)(1) through (6) or (f)(1) through (6) or 265.72(e)(1) through (6) or (f)(1) through (6).~~The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) ~~For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 264.72(e)(1) through (6) or 265.72(e)(1) through (6).~~The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) Transporters with agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: “Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf”; and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

Add 61-79.263.21(c) to read:

(c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with section 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in sections 264.72(e)(1) through (6) or (f)(1) through (6) or 265.72(e)(1) through (6) or (f)(1) through (6).

(2) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with section 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with sections 264.72(e)(1) through (6) or 265.72(e)(1) through (6).

Revise 61-79.264.71(a)(2) to read:

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his or her agent must:

(i) Sign and date~~, by hand~~, each copy of the manifest;

(ii) Note any discrepancies (as defined in section 264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one (1) copy of the manifest;

(iv) Within thirty (30) days of delivery, send a copy (Page ~~3~~2) of the manifest to the generator~~.~~;

(v) ~~Within thirty (30) days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and~~

~~that are supported by EPA's electronic reporting requirements and by the electronic manifest system.~~Paper manifest submission requirements are:

(A) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within thirty (30) days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within thirty (30) days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

Revise 61-79.264.71(j) to read:

(j) Imposition of user fee for electronic manifest use.

(1) ~~An~~As prescribed in section 264.1311, and determined in section 264.1312, an owner or operator who is a user of the electronic manifest ~~format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under Section 264.71(a)(2)(v). EPA shall maintain and update from time to time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this chapter.~~system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in section 264.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of section 264.1314, subject to the informal fee dispute resolution process of section 264.1316, and subject to the sanctions for delinquent payments under section 264.1315.

Add 61-79.264.71(l) to read:

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

Revise 61-79.264.1086(c)(4)(i) to read:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first ~~accepted~~accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator 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). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at section 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

Revise 61-79.264.1086(d)(4)(i) to read:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator 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). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at section 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

Add Subpart FF to 61-79.264. Table of Contents to read:

Add 61-79.264 Subpart FF to read:

SUBPART FF: Fees for the Electronic Hazardous Waste Manifest Program

264.1300. Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated hazardous wastes or other materials bring them within the definition of "user of the electronic manifest system" under section 260.10.

264.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

"Consumer price index" means the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

"**Cross Media Electronic Reporting Rule (CROMERR) costs**" are the sub-category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the CROMERR as codified at 40 CFR part 3.

"Electronic manifest submissions" means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under section 262.24(c)(1).

"EPA program costs" mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

"Help desk costs" mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

"Indirect costs" mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

"Manifest submission type" means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

"Marginal labor costs" mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, quality assurance (QA), scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

"Operations and maintenance costs" mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

"Paper manifest submissions" mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700-22, or a paper Continuation Sheet, EPA Form 8700-22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with section 264.1311(b), or by submitting both an image file and data file in accordance with the procedures of section 264.1311(c).

"System setup costs" mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

264.1311. Manifest transactions subject to fees.

(a) Per manifest fee. Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) Image file uploads from paper manifests. Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) Data file uploads from paper manifests. Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

264.1312. User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

Fee_i = (System Setup Cost/[Years x N_t]) + (Marginal $Cost_t$ + [O&M Cost/N_t]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where Fee_i represents the per manifest fee for each manifest submission type "i" and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four (4) years of system operations, electronic manifest usage does not equal or exceed seventy-five (75) percent of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

Fee_i = (System Setup Cost/[Years x N_t]) + (Marginal $Cost_i$ + [$O\&M_i$ Cost/N_i]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

$O\&M_{fully\ electronic}$ Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

$O\&M_{all\ other}$ Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where N_i refers to the total number of one (1) of the four (4) manifest submission types "*i*" completed in a year and $O\&M_i$ *Cost* refers to the differential O&M Cost for each manifest submission type "*i.*"

(2) At the completion of four (4) years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

264.1313. User fee revisions.

(a) Revision schedule.

(1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in section 264.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the two (2) fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered calendar year.

(b) Inflation adjuster. The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$Fee_{i_{Year2}} = Fee_{i_{Year1}} \times (CPI_{Year2\text{-}2}/CPI_{Year2\text{-}1})$$

Where:

$Fee_{i_{Year2}}$ is the Fee for each type of manifest submission "*i*" in Year 2 of the fee cycle;

$Fee_{i_{Year1}}$ is the Fee for each type of manifest submission "*i*" in Year 1 of the fee cycle; and

$CPI_{Year2\text{-}2}/CPI_{Year2\text{-}1}$ is the ratio of the CPI published for the year two (2) years prior to Year 2 to the CPI for the year one (1) year prior to Year 2 of the cycle.

(c) Revenue recovery adjusters. The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of section 264.1312:

$$Revenue\ Recapture_i = (N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est} \times Fee_{i(Ave)}$$

Where:

$Revenue\ Recapture_i$ is the amount of fee revenue recaptured for each type of manifest submission "*i;*"

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous two-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

264.1314. How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's pay.gov online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within thirty (30) days of the date of the invoice or bill.

264.1315. Sanctions for delinquent payments.

(a) Interest. In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the twelve-month period ending September 30 of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be thirty (30) days from the date of the electronic invoice or bill.

(b) Financial penalty. In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than ninety (90) days past due (i.e., not paid by date one hundred twenty (120) days from date of invoice) shall be charged an additional penalty of six (6) percent per year assessed on any part of the debt that is past due for more than ninety (90) days, plus any applicable handling charges.

(c) Compliance with manifest perfection requirement. A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

264.1316. Informal fee dispute resolution.

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing dispute claims made under this section within ten (10) days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within ten (10) days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

Revise 61-79.265.71(a)(2) to read:

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date~~, by hand,~~ each copy of the manifest;

(ii) Note any discrepancies (as defined in 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within thirty (30) days of delivery, send a copy (Page 32) of the manifest to the generator.; and?

(v) Within thirty (30) days of delivery, send the top copy (Page 1) of the Manifest to the electronic manifest system for purposes of data entry and processing. Instead of mailing this paper copy to EPA, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.Paper manifest submission requirements are:

(A) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within thirty (30) days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within thirty (30) days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

Revise 61-79.265.71(j)(1) and (2) to read:

(j) Imposition of user fee for electronic manifest use.

(1) AnAs prescribed in section 265.1311, and determined in section 265.1312, an owner or operator who is a user of the electronic manifest format maysystem shall be assessed a user fee by EPA for the origination orsubmission and processing of each electronic and paper manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under Section 264.71(a)(2)(v). EPA shall maintain and update from time to time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this chapter.EPA shall update the schedule of user fees and publish them to the user community, as provided in section 265.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of section 265.1314, subject to the informal fee dispute resolution process of section 265.1316, and subject to the sanctions for delinquent payments under section 265.1315.

Add 61-79.265.71(l) to read:

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one (1) certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

Revise 61-79.265.1087(c)(4)(i) to read:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator 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). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at section 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

Revise 265.1087(d)(4)(i) to read:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 261.7(b)), the owner or operator 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). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at section 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

Add Subpart FF to 61-79.265. Table of Contents to read:

Add 265 Subpart FF to read:

SUBPART FF: Fees for the Electronic Hazardous Waste Manifest Program

265.1300. Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated wastes or other materials bring them within the definition of "user of the electronic manifest system" under section 260.10.

265.1310. Definitions applicable to this subpart.

The following definitions apply to this subpart:

"Consumer price index" means the consumer price index for all U.S. cities using the "U.S. city average" area, "all items" and "not seasonally adjusted" numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

"CROMERR costs" are the sub-category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

"Electronic manifest submissions" means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under section 262.24(c)(1).

"EPA program costs" mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

"Help desk costs" mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

"Indirect costs" mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

"Manifest submission type" means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

"Marginal labor costs" mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, quality assurance (QA), scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

"Operations and maintenance costs" mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

"Paper manifest submissions" mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700-22, or a paper Continuation Sheet, EPA Form 8700-22A. Such submissions may be made

by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with section 265.1311(b), or by submitting both an image file and data file in accordance with the procedures of section 265.1311(c).

"System setup costs" mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

265.1311. Manifest transactions subject to fees.

(a) Per manifest fee. Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) Image file uploads from paper manifests. Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) Data file uploads from paper manifests. Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

265.1312. User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

Fee_i = (System Setup Cost/[Years x N_t]) + (Marginal $Cost_i$ + [O&M Cost/N_t]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where Fee_i represents the per manifest fee for each manifest submission type "i" and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four (4) years of system operations, electronic manifest usage does not equal or exceed seventy-five (75) percent of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

Fee_i = (System Setup Cost/[Years x N_t]) + (Marginal $Cost_i$ + [$O\&M_i$ Cost/N_i]) x (1 + Indirect Cost Factor)

System Setup Cost = Procurement Cost + EPA Program Cost

$O\&M_{fully\ electronic}$ Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost ot Modify or Upgrade eManifest System Related Services

$O\&M_{all\ other}$ Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade eManifest System Related Services

Where N_i refers to the total number of one (1) of the four (4) manifest submission types "*i*" completed in a year and $O\&M_i$ *Cost* refers to the differential O&M Cost for each manifest submission type "*i*."

(2) At the completion of four (4) years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

265.1313 User fee revisions.

(a) Revision schedule.

(1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in section 265.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the next two (2) fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered year.

(b) Inflation adjuster. The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$Fee_{i_{Year\ 2}} = Fee_{i_{Year1}} \times (CPI_{Year2\text{-}2}/CPI_{Year2\text{-}1})$$

Where:

$Fee_{i_{Year2}}$ is the Fee for each type of manifest submission "*i*" in Year 2 of the fee cycle;

$Fee_{i_{Year1}}$ is the Fee for each type of manifest submission "*i*" in Year 1 of the fee cycle; and

$CPI_{Year2\text{-}2}/CPI_{Year2\text{-}1}$ is the ratio of the CPI published for the year two (2) years prior to Year 2 to the CPI for the year one (1) year prior to Year 2 of the cycle.

(c) Revenue recovery adjusters. The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of section 265.1312:

$$Revenue\ Recapture_i = [(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}] \times Fee_{i(Ave)}$$

Where:

$Revenue\ Recapture_i$ is the amount of fee revenue recaptured for each type of manifest submission "*i*;"

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous two-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

265.1314. How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's pay.gov online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within thirty (30) days of the date of the invoice or bill.

265.1315. Sanctions for delinquent payments.

(a) Interest. In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the twelve-month period ending September 30 of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be thirty (30) days from the date of the electronic invoice or bill.

(b) Financial penalty. In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than ninety (90) days past due (i.e., not paid by date one hundred twenty (120) days from date of invoice) shall be charged an additional penalty of six (6) percent per year assessed on any part of the debt that is past due for more than ninety (90) days, plus any applicable processing and handling charges.

(c) Compliance with manifest perfection requirement. A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

265.1316. Informal fee dispute resolution.

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing dispute claims made under this section within ten (10) days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within ten (10) days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

ATTACHMENT B
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-56-30

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-79, Hazardous Waste Management Regulations. Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on April 22, 2019, the close of the draft comment period.

Synopsis:

The Department proposes amending R.61-79 to adopt three final rules published in the Federal Register by the United States Environmental Protection Agency ("EPA"). The EPA requires state adoption of these rules, as the rules do not revise existing standards to make them less stringent.

The three final rules are summarized below.

1. The Department proposes adopting the "Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," published on May 30, 2018, at 83 FR 24664-24671. This rule revised several recycling-related provisions associated with the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). On July 7, 2017, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of this rule (see American Petroleum Inst. v. Environmental Prot. Agency, 883 F.3d 918 (D.C. Cir. 2018). This ruling affects portions of the Definition of Solid Waste Rule that the Department adopted on May 27, 2016. (see State Register Document No. 4646).

2. The Department proposes adopting the "Confidentiality Determinations for Hazardous Waste Export and Import Documents," published on December 26, 2017, at 82 FR 60894-60901. This rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. This rule applies a confidentiality determination such that no person can assert confidential business information claims for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes. The EPA makes these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation.

3. The Department proposes adopting the "Hazardous Waste Electronic Manifest System User Fee; Final Rule," published on January 3, 2018, at 83 FR 420-462. This rule establishes the methodology the EPA will use to determine and revise user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system ("e-Manifest system") in accordance with the Hazardous Waste Electronic Manifest Establishment Act, P.L. 112-195. The Hazardous Waste Electronic Manifest System became operational nationwide on June 30, 2018.

Pursuant to the Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(H)(1), these proposed amendments are exempt from General Assembly review because they are necessary to maintain compliance with federal law.

(x) ACTION/DECISION
( ) INFORMATION

Date: May 9, 2019

To: S.C. Board of Health and Environmental Control

From: Bureau of Public Health Preparedness

Re: Notice of Proposed Regulation Repealing R.61-23, *Control of Anthrax.*

I. Introduction

The Bureau of Public Health Preparedness proposes the attached Notice of Proposed Regulation repealing R.61-23, *Control of Anthrax*, for publication in the May 24, 2019, *South Carolina State Register* ("*State Register*"). Legal authority resides in S.C. Code Section 44-1-140, which allows the Department of Health and Environmental Control ("Department") to make rules for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this proposed repeal.

II. Facts

1. The Department promulgated R.61-23 in July of 1960 to prevent and/or control the ownership, possession, or transport of anthrax into or through the state. This regulation is no longer needed, as the federal government established Select Agent Regulations, at Code of Federal Regulations Title 7, Part 331 and Title 9, Part 121, effective February 7, 2003, setting forth requirements for possession, use, and transfer of select agents and toxins. The Federal Select Agent Program oversees and regulates the possession, use, and transfer of biological agents. The Federal Select Agent Program is jointly comprised of the Centers for Disease Control and Prevention/Division of Select Agents and Toxins, and the Animal and Plant Health Inspection Service/Agriculture Select Agent Services.

2. The Department had a Notice of Drafting published in the February 22, 2019, *State Register*. A copy of the Notice of Drafting appears herein as Attachment B. The Department received no public comments by the March 25, 2019, close of the public comment period.

3. Appropriate Department staff conducted an internal review of the proposed repeal on March 27, 2019.

III. Request for Approval

The Bureau of Public Health Preparedness respectfully requests the Board to grant approval of the attached Notice of Proposed Regulation for publication in the May 24, 2019, *State Register*.

Michael A. Elieff
Director, Bureau of Public
Health Preparedness

Nicholas E. Davidson
Interim Director, Public Health

Attachments:
A. Notice of Proposed Regulation
B. Notice of Drafting published in the February 22, 2019, *State Register*

ATTACHMENT A

STATE REGISTER NOTICE OF PROPOSED REGULATION
FOR R.61-23, *Control of Anthrax*

May 9, 2019

Document No. _____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-1-140

61-23. Control of Anthrax.

Preamble:

The Department promulgated R.61-23 in July of 1960 to prevent and/or control the ownership, possession, or transport of anthrax into or through the state. This regulation is no longer needed, as the federal government established Select Agent Regulations, at Code of Federal Regulations Title 7, Part 331 and Title 9, Part 121, effective February 7, 2003, setting forth requirements for possession, use, and transfer of select agents and toxins. The Federal Select Agent Program oversees and regulates the possession, use, and transfer of biological agents. The Federal Select Agent Program is jointly comprised of the Centers for Disease Control and Prevention/Division of Select Agents and Toxins, and the Animal and Plant Health Inspection Service/Agriculture Select Agent Services. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this proposed repeal.

The Department had a Notice of Drafting published in the February 22, 2019, South Carolina State Register.

Section-by-Section Discussion of Proposed Repeal:

R.61-23 is struck in its entirety.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed repeal to Michael Elieff of the Bureau of Public Health Preparedness; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; elieffma@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on June 24, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed repeal during its August 8, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: http://www.scdhec.gov/Agency/docs/AGENDA.PDF.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/.

Preliminary Fiscal Impact Statement

There are no anticipated additional costs to the state and its political subdivisions.

Statement of Need and Reasonableness

The following presents an analysis of the factors listed in 1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-23, Control of Anthrax

Purpose: R.61-23 is no longer needed as the federal government has established federal regulations under the Federal Select Agent Program. The federal program oversees the possession, use and transfer of biological select agents and toxins, which have the potential to pose a severe threat to public, animal, or plant health or to animal or plant products.

Legal Authority: 1976 Code Section 44-1-140

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) provides a summary of and link to this proposed repeal. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the repeal and any associated information.

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

The Department promulgated R.61-23 in 1960 and has never amended or updated the regulation. This regulation is no longer needed due to the passage of federal regulations governing the possession, use, and transfer of biological select agents and toxins posing a threat to public, animal, or plant health, or to animal or plant products.

DETERMINATION OF COSTS AND BENEFITS:

There are no costs to the state or its political subdivisions associated with the repeal of R.61-23. The benefit of repealing this regulation is removing unnecessary regulatory requirements.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Repealing R.61-23 will not compromise the protection of the environment or public health, as the federal government administers anthrax related protections under the Federal Select Agent Program.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment if this regulation is not repealed. Failure to repeal the regulation would merely result in an unnecessary regulation remaining in effect.

Statement of Rationale:

R.61-23 is no longer needed, as the federal government has established federal regulations under the Federal Select Agent Program. The federal program oversees the possession, use, and transfer of biological select agents and toxins, which have the potential to pose a severe threat to public, animal, or plant health, or to animal or plant products.

Text:

~~Indicates Matter Stricken~~
Indicates New Matter

~~61-23. Control of Anthrax.~~

~~It shall be unlawful to ship or otherwise transport into or through the State of South Carolina, or to own or have in possession within the said State any product or animal by-product, foodstuff or other material considered to constitute a health hazard which originates in a county, state, or country where anthrax or other communicable diseases are reported to exist, provided that the aforementioned products may be permitted entry into the State of South Carolina upon written application and under such requirements and conditions as may be required by the State Health Officer. Such permit shall be in writing and shall accompany the shipment from its point of entry to its destination within the State, provided that this regulation is in conjunction with and not in conflict with any other State or Federal regulation pertaining to the same subject matter.~~ [Repealed].

ATTACHMENT B

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes repealing R.61-23, Control of Anthrax. Interested persons may submit comment(s) on the proposed repeal to Mike Elieff of the Bureau of Public Health Preparedness; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; elieffma@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 25, 2019, the close of the drafting comment period.

Synopsis:

R.61-23 was promulgated July 1960 to prevent and/or control the ownership, possession, or transport of anthrax into or through the state. This regulation is no longer needed, as the federal government established Select Agent Regulations, at 7 C.F.R. Part 331 and 9 C.F.R. Part 121, setting forth requirements for possession, use, and transfer of select agents and toxins. The Federal Select Agent Program oversees and regulates the possession, use, and transfer of biological agents. The Federal Select Agent Program is jointly comprised of the Centers for Disease Control and Prevention/Division of Select Agents and Toxins and the Animal and Plant Health Inspection Service/Agriculture Select Agent Services.

General Assembly review is required.