



April 22, 2022

By USPS and Electronic Mail

SC Environmental Law Project
Attn: Benjamin D. Cunningham, Esq.
P.O. Box 1380
Pawleys Island, SC 29585

Re: Response to Petition for Rule-Making, S.C. Code Regs. 61-9.504.12, 61-9.504.13
61-58.2, 61-58.3, 61-58.7, and 61-58.11 ("Petition")

Dear Mr. Cunningham:

The South Carolina Department of Health and Environmental Control ("Department") submits this response to the above-referenced Petition, received by the Department on March 23, 2022.

The Petition contains a request, pursuant to S.C. Code Ann. §1-23-126, for amendments to existing regulations to address the following: EPA's Revisions to its Lead and Copper Rule, Requirements for Disinfectants, Water Tank Inspections, and Per- and Polyfluoroalkyl Substances (PFAS) Contamination. This letter addresses each of these topics, agreeing to implement the state agency rulemaking process where appropriate and denying the request for regulatory amendment beyond the Department's authority.

Adoption of the EPA's Revisions to its Lead and Copper Rule

The Petition requests amendments to S.C. Code Reg. 61-58.11 to promptly and fully implement the EPA's revisions to its Lead and Copper Rule. The Department has already begun the state agency rulemaking process to amend the regulation. A Notice of Drafting was published in the State Register on March 25, 2022. Your clients are encouraged to participate in this rulemaking process.

Requirements for Disinfectants

The Petition requests amendments to S.C. Code Reg. 61-58.2 and 61-58.3 to require registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to receive Department authorization to use a chemical as a disinfectant for a drinking water source. FIFRA is the Federal statute that governs the registration, distribution, sale, and use of pesticides in the United States. As noted in the Petition, the Department's regulation requires that a disinfectant be certified for use by NSF

International under ANSI/NSF Standard 60: Drinking Water Treatment Chemicals: Health Effects.

The request to amend Department regulations to implement FIFRA requirements is denied, because the Department does not have the authority to adopt and enforce FIFRA requirements in South Carolina. Pesticides are regulated under the South Carolina Pesticide Control Act (SCPCA), S.C. Code Ann. §46-13-10, *et seq.*, which is administered by the State Crop Pest Commission. The SCPCA provides for registration of pesticides and devices in South Carolina. S.C. Code Ann. §46-13-40.

Notably, EPA places the burden to ensure FIFRA registration on public water systems. Per the EPA's website, "it is the responsibility of each PWS [Public Water System] to ensure that all disinfectants, algaecides, bactericides, molluscicides, piscicides and other pesticidal products it uses to treat drinking water are registered under FIFRA by EPA."

Water Tank Inspections

The Petition requests amendments to S.C. Code Reg. 61-58.7 to require annual inspections of the interior of drinking water storage tanks and remedial action within 6 months if unsanitary conditions are detected. While the current regulation does not require periodic interior inspections, the regulation does require public drinking water systems to have certified operators that are responsible for the proper operation and maintenance of all components of the drinking water system.

The Department does not currently concur that an absolute interior inspection requirement for all tanks is appropriate; however, we are prepared to move forward with the state agency rulemaking process to gather additional information and explore whether the regulation should be amended to require additional measures to ensure water quality. As a first step in this process, the Department will prepare a Notice of Drafting and initiate discussions with a diverse group of stakeholders. Your clients are encouraged to participate in this rulemaking process.

PFAS Contamination

The Petition requests amendments to S.C. Code Reg. 61-9.504.12 and 61-9.504.13 to require analysis of industrial sludge for PFAS class chemicals before any land application can be authorized and further site restrictions if PFAS chemicals are detected in the sludge to avoid contamination of crops or livestock. The Petition also requests amendments to require testing for PFAS class chemicals and other new contaminants in areas where industrial sludge has been applied to land. Alternatively, the Petition asserts that an emergency regulation be pursued.

A review of current statutes and regulations reveals the Department has broad authority to require new and existing permittees to analyze and monitor industrial

sewage sludge under certain circumstances.¹ However, the regulations do not directly address the PFAS class of chemicals. To specify requirements for analysis and monitoring for PFAS class chemicals in industrial sewage sludge, the Department is prepared to move forward with the state agency rulemaking process. As a first step in this process, the Department will prepare a Notice of Drafting and initiate discussions with a diverse group of stakeholders. Your clients are encouraged to participate in this rulemaking process.

The Petition suggests an emergency regulation as an alternative to the state agency rulemaking process. Given the Department's existing regulatory authority, the Department will initiate the state agency rulemaking process in compliance with the procedures prescribed in the South Carolina Administrative Procedures Act. If the Department determines that our existing authority and the timeliness of the rulemaking process forestall necessary action to address an imminent peril to public health, safety, or welfare, we may file an emergency regulation or take other appropriate emergency action.

In conclusion, DHEC appreciates the collaboration and support of your clients with improving drinking water quality in South Carolina, particularly in rural areas. The Petition points to your clients engaging in environmental justice efforts to incentivize strategic plans to prioritize support for water systems in vulnerable communities. For many years, DHEC has prioritized and considered environmental justice in our decision-making. We will continue to encourage the use of collaborative, problem-solving strategies and partnerships amongst our local, state, and federal governmental partners as well as other public and private organizations and citizens from around the state. We welcome your clients' participation in the state rulemaking processes we are initiating as set forth in this letter.

If you have any questions regarding this response, please don't hesitate to contact me at hughesjr@dhec.sc.gov.

Sincerely,



Jennifer R. Hughes, Chief
Bureau of Water

cc: Myra Reece, Director of Environmental Affairs
Sara Martinez, Chief Counsel for Environmental Affairs

¹ See S.C. Code Reg. 61-9.504.5 (relating to requirements in permits for the use or disposal of industrial sludge not specifically included in the regulation when necessary to protect public health and the environment from any adverse effect of a pollutant in the industrial sludge); S.C. Code 61-9.505.44(i) (relating to groundwater monitoring of any pollutant which may be in the wastewater which has a significant potential to effect the environment); and S.C. Code Reg. 61-9.505.62 (relating to modification of an existing permit where any information exists indicating that the level of discharge of any pollutant which is not limited in the permit exceeds the level which may cause an adverse impact to surface or groundwaters).