Agency Name: Department of Health and Environmental Control

Statutory Authority: 44-56-10 et seq.

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Proposed in State Register Volume and Issue: 34/12

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Status: Final

Subject: Hazardous Waste Management Planning

History: 4175

By Date Action Description Jt. Res. No. Expiration Date

- 12/24/2010 Proposed Reg Published in SR

- 03/17/2011 Received by Lt. Gov & Speaker 02/21/2012

S 03/22/2011 Referred to Committee

H 03/29/2011 Referred to Committee

S 02/07/2012 Resolution Introduced to Approve 1181

- 02/21/2012 Approved by: Expiration Date

- 03/23/2012 Effective Date unless otherwise

provided for in the Regulation

Document No. 4175

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq.

61-99. Hazardous Waste Management Planning

**Synopsis:**

R.61-99 was promulgated and published as a final regulation in the State Register on January 26, 1990, Vol. 14, Issue No. 2. It requires a “demonstration of need” before any applicant can receive a permit to establish or expand a hazardous waste management facility. This need can be demonstrated only by reference to the volume of in-state wastes.

On April 13, 1995, the United States District Court ruled: South Carolina Department of Health and Environmental Control Regulation 61-99 (III)(C) is declared invalid and is permanently enjoined. Environmental Technology Council v State of SC, 901 F. Supp. 1026 (D.S.C., 1995). The Court held that Regulation 61-99 (III)(C) discriminated against interstate commerce in violation of the Commerce Clause. The District Court ruling was upheld on appeal. This court ruling made this regulation null and void. The regulation has remained in the Code of Regulations of the S.C. Code of Laws. It is obsolete and cannot be enforced. In the interest of good government and efficiency, the Department has repeal Regulation 61-99.

A Notice of Drafting for repeal of R.61-99 was published in the State Register on June 25, 2010.

**Instructions:** Repeal R.61-99, Hazardous Waste Management Planning.

**Text:**

61-99. [Repealed]

**Fiscal Impact Statement:**

There will be no costs to the state or its political subdivisions associated with this repeal.

**Statement of Need and Reasonableness**:

This Statement of Need and Reasonableness complies with Sections 1-23-115(c)(1)-(3) and (9)-(11), S.C. Code of Laws, 1976, as amended.

DESCRIPTION OF REGULATION: Repeal of R.61-99, Hazardous Waste Management Planning.

Purpose: Repeal of 61-99, Hazardous Waste Management Planning.

Legal Authority: Sections 44-56-10 et seq., S.C. Code of Laws, 1976, as amended.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, the South Carolina General Assembly, and publication in the State Registeras final, this regulation will be repealed.

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

This regulation was promulgated and published as a final regulation in the State Register Vol. 14, Issue No. 2 on January 26, 1990. When this regulation was enacted, each state was obligated to certify that it would have waste disposal capacity sufficient for the next twenty years. Sites suitable for proper disposal of hazardous waste were limited and to insure the availability of hazardous waste management facilities to the industries of South Carolina applicants for permits to establish or expand hazardous waste management facilities would demonstrate to the Department the need for such new or expanded facilities.

On April 13, 1995, the United States District Court ruled that South Carolina Department of Health and Environmental Control Regulation 61-99 (III)(C) is declared invalid and is permanently enjoined. Environmental Technology Council v State of SC, 901 F. Supp. 1026 (D.S.C., 1995).

The Court held Regulation 61-99 (III)(C) discriminated against interstate commerce in violation of the Commerce Clause. The District Court ruling was upheld on appeal. States may not engage in economic protectionism, and RCRA contains no clear statement or indication of legislative intent to permit states to override the U.S. Constitution. The federal court ruling which was upheld on appeal declared S.C. R.61-99 null and void. The regulation has remained in the Code of Regulations but cannot be enforced. In the interest of effective government the Department has repealed Regulation 61-99.

DETERMINATION OF COSTS AND BENEFITS:

The repeal of R.61-99 will have no substantial fiscal or economic impact on the State and its political subdivisions or the regulated community.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no environmental or public health effect.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will not be a detrimental effect on the environment and public health. However, repeal of this regulation is necessary to clarify that it is no longer valid and enforceable, and will eliminate confusion for the regulated community.

**Statement of Rationale:**

Upon review of Department regulations and the status of this regulation, it was determined that R.61-99 should be repealed as it is obsolete and no longer enforceable.