COMMITTEE REPORT

March 23, 2010

**H. 4531**

Introduced by Agriculture, Natural Resources and Environmental Affairs Committee

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Read the first time March 3, 2010.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Joint Resolution (H. 4531) to approve regulations of the Department of Health and Environmental Control, relating to Air Pollution Control Regulations and Standards, designated as Regulation Document Number 4070, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HARVEY S. PEELER, JR. for Committee.

**A** **JOINT RESOLUTION**

TO APPROVE REGULATIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, RELATING TO AIR POLLUTION CONTROL REGULATIONS AND STANDARDS, DESIGNATED AS REGULATION DOCUMENT NUMBER 4070, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The regulations of the Department of Health and Environmental Control, relating to Air Pollution Control Regulations and Standards, designated as Regulation Document Number 4070, and submitted to the General Assembly pursuant to the provisions of Article 1, Chapter 23, Title 1 of the 1976 Code, are approved.

SECTION 2. This joint resolution takes effect upon approval by the Governor.

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SUMMARY AS SUBMITTED

BY PROMULGATING AGENCY.

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule established standards of performance for mercury for new and existing coal‑fired electric utility steam generating units (EGUs), as defined in the Clean Air Act (CAA) section 111. This final rule became effective July 18, 2005. The South Carolina CAMR became state‑effective upon the publication of a Notice of Final Regulation in the South Carolina *State Register* (*State Register)* on June 22, 2007 (Document No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05‑1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61‑62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Document No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03‑1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT.” This final rule became effective November 12, 2004, and was incorporated by reference in R. 61‑62.63, by a Notice of Final Regulation published in the *State Register* (Document No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04‑1385). The final mandate for this case was issued on July 30, 2007.

The South Carolina Department of Health and Environmental Control (Department or DHEC) has amended R. 61‑62, *Air Pollution Control Regulations and Standards,* by removing the aforementioned provisions of the State CAMR in R. 61‑62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, and R. 61‑62.72, *Acid Rain*. The Department has also amended R. 61‑62.63, by removing all the provisions of the aforementioned rules published in the *Federal Register* May 16, 2003, and September 13, 2004.

A Notice of Drafting for these amendments was published in the State Register on November 28, 2008.

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