

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)

7 DE Admin. Code 1104

FINAL

Secretary's Order No.: 2016-A-0047

Date of Issuance: November 21, 2016

Effective Date of the Amendment: January 11, 2017

1104 Particulate Emissions from Fuel Burning Equipment

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed Revisions to the Delaware State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction ("SSM") SIP Call of the United States Environmental Protection Agency ("USEPA", "EPA") of June 12, 2015 (see 80 FR 33840). As a result of a petition to EPA by the Sierra Club, the EPA has identified thirty-six (36) states with inadequate SIPs as they relate to SSM activities. EPA has specifically identified seven (7) existing Delaware rules in the SIP Call. The seven Delaware regulations cited by EPA were 7 DE Admin. Code 1104, 1105, 1108, 1109, 1114, 1124, and 1142. As a result, Delaware is proposing revisions to four of these regulations, as follows, to wit: 7 DE Admin. Code 1104, 1105, 1124 and 1142.

While the three remaining regulations noted above (7 DE Admin. Code 1108, 1109, and 1114) are also part of the aforementioned SIP Call, the Department is not proposing revisions to the same at this time. 7 DE Admin. Code 1109 and 1114 are at this present time being removed from the SIP. With regard to 7 DE Admin. Code 1108, the Department had already removed the offending SSM language when that regulation was last revised in 2013. As such, the Department is formally addressing all three of these remaining regulations, but not proposing any amendments to the same as part of this present action.

It should be noted that the Department received comments prior to the public hearing of October 25, 2016 from both the Sierra Club and the EPA on the aforementioned proposed regulatory Amendments and SIP revisions. As noted within the Department's Technical Response Memorandum ("TRM") prepared in this matter by the Division of Air Quality ("DAQ"), Delaware does not agree that its SIP is deficient. Despite this disagreement, the Department has proposed these Amendments to both its regulations and SIP as referenced above, to avoid the imposition of potential federal Clean Air Act ("CAA") sanctions. Delaware has designed the proposed revisions to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA, (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions, and (3) maintain the elements removed from the SIP as State-only requirements, because Delaware believes the conditions are necessary to administer good air quality management policy. Further, Delaware believes that, from an environmental perspective, the proposed revisions reflect no change at all, because the proposal retains the disputed provisions as State-enforceable-only provisions. Lastly, Delaware opines that, from EPA's perspective, the removal of the offending provisions from the SIP should be considered as SIP strengthening, thus approvable and non-controversial.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory Amendments and SIP revisions as referenced above, pursuant to 7 Del.C. Chapter 60. The aforementioned proposed Amendments and SIP revisions were initially published in the October 1, 2016 edition of the Delaware *Register of Regulations*, and were presented and thoroughly vetted by the Department at the public hearing held on October 25, 2016. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through November 9, 2016, however, none was received during the post-hearing phase of this promulgation. All proper notification and noticing requirements concerning the aforementioned regulatory Amendments and proposed SIP revisions were met by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 21, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments and SIP revisions as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to the following existing Delaware regulations: (1) **7 DE Admin. Code 1104**, "*Particulate Emissions from Fuel Burning Equipment*"; (2) **7 DE Admin. Code 1105**, "*Particulate Emissions from Industrial Process Operations*"; (3) **7 DE Admin. Code 1124**, "*Control of Volatile Organic Compound Emissions*"; (4) **7 DE Admin. Code 1142**, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of both the aforementioned regulatory Amendments and SIP revisions. The promulgation of the regulatory Amendments and proposed SIP revisions referenced above will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code 1104**, "*Particulate Emissions from Fuel Burning Equipment*"; **7 DE Admin. Code 1105**, "*Particulate Emissions from Industrial Process Operations*"; **7 DE Admin. Code 1124**, "*Control of Volatile Organic Compound Emissions*"; and **7 DE Admin. Code 1142**, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, pursuant to **7 Del.C. Ch. 60**;

2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. Ch. 60**, to issue an Order adopting these proposed regulatory amendments and SIP revisions as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and SIP revisions, and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments and SIP revisions, including at the time of the public hearing held on October 25, 2016, and held the record open through close of business on November 9, 2016, consistent with **29 Del.C. §10118(a)**, in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended regulatory Amendments and proposed SIP revisions as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the aforementioned regulatory Amendments and proposed SIP revisions will enable the Department to (1) remove the Director's discretion provisions from the SIP that EPA believes fail to comply with the CAA; (2) comport with EPA guidance and the regulatory structure the EPA has established in other actions; (3) maintain the elements removed from the SIP as State-only requirements because Delaware believes the conditions are necessary to administer good air quality management policy, as referenced above; and (4) avoid the imposition of CAA sanctions;

6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104** (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B5" regarding same, as the proposed regulation Amendments are required by federal law. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed SIP revision, as published in the October 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "B" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final regulatory amendments to **7 DE Admin. Code 1104**, "*Particulate Emissions from Fuel Burning Equipment*"; **7 DE Admin. Code 1105**, "*Particulate Emissions from Industrial Process Operations*"; **7 DE Admin. Code 1124**, "*Control of Volatile Organic Compound Emissions*"; and **7 DE Admin. Code 1142**, "*Specific Emission Control Requirements*", as well as the proposed revisions to the Delaware SIP, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

1104 Particulate Emissions from Fuel Burning Equipment

1.0 General Provisions

- 1.1 The emission of particulate matter from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply where the heat input capacity of the equipment is less than 1,000,000 BTU per hour.
- 1.3 The provisions of this regulation shall not apply to equipment or operations whose emissions are controlled by 7 DE Admin. Code 1105 or 7 DE Admin. Code 1107 or 7 DE Admin. Code 1129.
- 1.4 For purposes of this Regulation, the heat input value shall be based upon the manufacturer's guaranteed maximum input or the Department's calculated input capacity.
- 1.5 The provisions of subsection 2.1 of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of Section 2.0 of 7 DE Admin. Code 1102.

17 DE Reg. 536 (11/01/13)

02/01/1984 [~~xx/xx/2016~~ 01/11/2017]

2.0 Emission Limits

- 2.1 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.
- 2.2 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.

12 DE Reg. 347 (09/01/08)

17 DE Reg. 536 (11/01/13)

20 DE Reg. 556 (01/01/17) (Final)