

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR QUALITY**

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

**GENERAL NOTICE**

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

**Final Revisions to Delaware's State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction SIP Call of the United States Environmental Protection Agency (U.S. EPA)**

**Date of Issuance: November 21, 2016**

**Effective Date of the Amendment: January 11, 2017**

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

*Proposal*

**Delaware**

Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Start-up and Shutdown

Submitted To  
U.S. Environmental Protection Agency

Submitted By  
Delaware Department of Natural Resources and Environmental Control

September 15, 2016

## 1. Introduction

On June 12, 2015 the EPA, identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions (80 FR 33840). Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. The seven Delaware regulations are: 7 **DE Admin. Code** 1104, 1105, 1108, 1109, 1114, 1124 and 1142.

Delaware does not agree with the EPA for the reasons cited in the comments Delaware made to the EPA docket. Despite this disagreement Delaware is revising the Delaware's SIP to comport with the EPA SIP Call to ensure the State is not subject to punitive CAA sanctions. This document details the revisions Delaware is making to the SIP, and demonstrates that these revisions comport with the EPA's interpretation of the CAA and are consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

## 2. SIP Revision and Impact Analysis

### 2.1. 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment

2.1.1. Delaware requests that EPA revise 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment, in the Delaware SIP as follows<sup>1</sup>:

~~1.5 The provisions 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 2.0 of 7 **DE Admin. Code** 1102.~~

~~2.1 ReservedNo 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.~~

2.1.2. Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.

### 2.2. 7 **DE Admin. Code** 1105, Particulate Emissions from Industrial Process Operations

2.2.1. Delaware requests that EPA revise 7 **DE Admin. Code** 1105 Particulate Emissions from Industrial Process Operations, in the Delaware SIP as follows<sup>2</sup>:

~~1.7 The provisions 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 2.0 of 7 **DE Admin. Code** 1102.~~

~~2.1 ReservedNo person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.~~

~~2.2 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.~~

2.2.2. Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This

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1. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.5 and 2.1) will be retained and enforced by Delaware through the State regulation.
  2. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.7 and 2.1) will be retained and enforced by Delaware through the State regulation.

revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.

2.3. **7 DE Admin. Code 1108**, Sulfur Dioxide Emissions from Fuel Burning Equipment. For **7 DE Admin. Code 1108** the provision EPA identified as deficient (i.e., 1.2) was removed from the Regulation under Secretary's Order (2013-A-0021), which was signed on 6/11/2013 and submitted to the EPA as a SIP revision. Since this SIP Call only deals with 1.2 of 1108, and since the revised regulation which does not include 1.2 was submitted to the EPA as a SIP revision, no further action is required under this SIP Call by Delaware relative to **7 DE Admin. Code 1108**.

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

2.4. **7 DE Admin. Code 1109**, Emissions of Sulfur Compounds from Industrial Operations. For **7 DE Admin. Code 1109** Delaware requests that the EPA remove the entire regulation from the Delaware SIP <sup>3</sup>.

Delaware believes existing federal requirements like, for example, New Source Performance Standards are adequate to ensure attainment and maintenance of sulfur related NAAQS in Delaware. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

2.5. **7 DE Admin. Code 1114**, Visible Emissions. For **7 DE Admin. Code 1114** Delaware requests that the EPA remove the entire regulation from the Delaware SIP <sup>4</sup>.

Delaware believes existing federal requirements like, for example, New Source Performance Standards regulate visible emissions, plus other Delaware SIP regulations that regulate fine particulate matter and fine particulate matter precursors (e.g., 1108 and 1146) are adequate to ensure attainment and maintenance of any particulate related NAAQS in Delaware. Further, there is no quantifiable relationship between visibility emissions and fine particulate matter emissions. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the the EPA's interpretation of CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

2.6. **7 DE Admin. Code 1124**, Control of Volatile Organic Compound Emissions. For **7 DE Admin. Code 1124** Delaware requests that the EPA remove the provision EPA identified as deficient (1.4) from the Delaware SIP as follows:

~~1.4 ReservedThe provisions of this regulation shall not apply to the startup and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during startup and shutdown are governed by an Operating Permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the EPA's interpretation of the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

2.7. **7 DE Admin. Code 1142**, Section 2.0, Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. For **7 DE Admin. Code 1142** Delaware requests that the EPA remove the provision EPA identified as deficient (2.3.1.6) from the Delaware SIP as follows:

~~2.3.1.6 ReservedThe standards set out in 2.3 of this regulation shall not apply to the start-up and shutdown of equipment when emissions from such equipment during a start-up and shutdown are addressed in an operation permit issued pursuant to the provisions of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

### 3. Conclusion

Based on the analysis in the previous section of this document, Delaware concludes that this regulatory revision including the identified SIP revision will not have any adverse impact on Delaware's overall efforts for attaining and maintaining all NAAQS. Therefore, this SIP revision and its analysis meet the anti-backsliding provision of CAA Sec. 110(1).

**20 DE Reg. 567 (01/01/17) (Gen. Notice)**

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3. The regulation will be retained and enforced by Delaware.

4. The regulation will be retained and enforced by Delaware.