

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6006 and 6010 (7 Del.C. §§ 6006 & 6010)

GENERAL NOTICE

Secretary's Order No.: 2024-A-0002

Approving Final Revision to Delaware's State Implementation Plan ("SIP"): *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard*

Date of Issuance: February 13, 2024

Effective Date of the Amendment: March 11, 2024

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 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard* ("NAAQS"). Delaware is required by Section 110 of the federal *Clean Air Act* ("CAA") to submit to U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQSs established by the EPA.

A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

In 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 70 parts per billion (ppb). Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NOx), and carbon monoxide (CO) in the presence of sunlight, is a serious air pollutant that harms human health and the environment. The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation. Non-Attainment areas classified as "moderate" or above (i.e. Serious, Severe, Extreme) the NAAQS, are required to identify control measures that will reduce emissions from pollutant sources.

On June 4, 2018, under the 2015 8-hour Ozone NAAQS, the EPA designated 51 areas of the country as non-attainment which included the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area ("Philadelphia NAA"). The Philadelphia NAA is comprised of 16 counties, with New Castle County being as one of its regions. Collectively, the 2018-2020 design value for the area measured 0.074 parts per million (ppm) which is equal to 74 ppb and does not meet the revised NAAQS for ground-level ozone. The EPA classified the Philadelphia NAA as "marginal" nonattainment and required the Philadelphia NAA to meet the NAAQS attainment level by August 3, 2021.

On October 7, 2022, it was determined by the EPA that the Philadelphia NAA failed to meet attainment standards established in the NAAQS by August 3, 2021. Subsequently, the EPA published Final Rule 87 FR 60897 and reclassified the Philadelphia NAA as "moderate" non-attainment. State agencies of areas designated as moderate non-attainment are required to submit a revised State SIP and implement controls to satisfy the statutory and regulatory requirements for the 2015 ground-level ozone NAAQS. Areas reclassified to moderate encounter more stringent CAA requirements designed to achieve attainment of the NAAQS.

In accordance with 40 CFR Part 52 Subpart I, the Department is required to identify, through a SIP, how Delaware will achieve attainment of the NAAQS by August 3, 2024. The Department is proposing revisions to Delaware's SIP by incorporating the following components to meet the requirements associated with the 2015 8-hour ozone NAAQS:

- Attainment Modeling - demonstrates that the New Castle County portion of the Philadelphia-Wilmington, Atlantic City, PA-NJ-MD-DE moderate NAA will attain the 2015 8-hour Ozone NAAQS in 2023.
- Reasonable Further Progress (RFP) - to ensure that the air quality in New Castle County makes steady and incremental progress toward attaining the 2015 8-hour Ozone NAAQS.
- Control Measures and Emission Reductions - to detail existing controls needed to attain the 2015 8-hour Ozone NAAQS.
- Mobile Vehicle Emission Budgets - Delaware's 2023 mobile source budgets (portions of total allowable emissions that are allocated to On-road mobile sources) for transportation conformity determination.
- Contingency Measures - specific control measures to be implemented if the area fails to make RFP, fails to meet any applicable milestone, or fails to attain the NAAQS by the applicable attainment date.
- Base Year Inventory - establishes a baseline emissions inventory (2017).
- Reasonably Available Control Technology - the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available.
- Reasonably Available Control Measures - measures necessary to achieve attainment as soon as possible.
- Gasoline Vapor Recovery - systems for gasoline vapor recovery of emissions from the fueling of motor vehicles.
- Non-Attainment New Source Review (NNSR) Certification - certifies the adequacy of Delaware's NNSR program.
- Motor Vehicle Inspection and Maintenance Program - identifies problems with vehicle emission control systems and assures their repairs.
- General Emission Offset Requirement - offsets the annual emissions increase from new sources or source modifications to provide a new air quality benefit. The ratio shall be at least 1.15 to 1 for Moderate NAAs.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the November 28, 2023, public hearing to be held in this matter, in the November 1, 2023, *Delaware Register of Regulations*. Subsequent to the publication of the General Notice, the Department proposed additional revisions to the SIP in response to EPA's pre-hearing review. The Department is proposing non-substantive amendments to the SIP modifications, that include grammatical revisions, removal of most references and background regarding Sussex and Kent Counties, as they are not part of the Philadelphia NAA, and other clarifications throughout the SIP document.

The proposed *revised* SIP modifications were thoroughly vetted during at the hearing held on November 28, 2023. The revisions were deemed non-substantive and no further action was required by the Department. The Record remained open for comment following the public hearing through December 13, 2023. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Smith, prepared a Hearing Officer's Report dated January 14, 2023 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the proposed SIP revision into Delaware's SIP document. The Department will meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I and provide EPA with revisions to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for The 2015 8-Hour Ozone National Ambient Air Quality Standard*, as attached to the Report as Appendix "A."

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 Department's proposed revision to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*, meets the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I. I further find that the Department's experts in the

Division of Air Quality fully developed the Record to support adoption of the proposed *revised* SIP modifications as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, 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 this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed *revised* SIP modifications, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed *revised* SIP modification, and held the Record open for receipt of public comment subsequent to the date of the hearing (through December 13, 2023), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended proposed *revised* SIP modifications as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed *revised* SIP modification will enable the Department to meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I and provide EPA with revisions to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*;
6. The Department's proposed SIP revision, as published in the November 1, 2023 *Delaware Register of Regulations*, and subsequently *revised*, is set forth in Appendix "A" as noted above, and is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall submit this Order approving as final revisions to Delaware's SIP document 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.

Shawn M. Garvin
Secretary

***Please Note: Due to the size and formatting requirements of the notice document, it is being attached here as a PDF document:**

[http://regulations.delaware.gov/register/march2024/general/Appendix A - Final Non-Attainment Plan \(2\).pdf](http://regulations.delaware.gov/register/march2024/general/Appendix A - Final Non-Attainment Plan (2).pdf)
<http://regulations.delaware.gov/register/march2024/general/Bold-Bracketed 2015 Ozone NAAQS Attainment Plan.pdf>

27 DE Reg. 695 (03/01/24) (Gen. Notice)