Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

Final Plan

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards

State Implementation Plan Revision For Ozone, Fine Particulate Matter ($PM_{2.5}$), and Visibility

December 13, 2007

Delaware Department of Natural Resources and Environmental Control, Air Quality Management

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1.0 Preamble, Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the Clean Air Act ("CAA"), specifically, CAA §110(a)(2). Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the eight-hour ozone and in some cases the fine particulate ($PM_{2.5}$) NAAQS are being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law, which gives the Delaware DNREC the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the eight-hour ozone and fine particulate ($PM_{2.5}$) NAAQS are already contained in Delaware's SIP or in SIP revisions which have been submitted to but not yet approved by EPA. The following Table identifies those SIP provisions. The attainment and base year inventory plans and the regulations cited in the following Table have gone through public notice and hearing prior to submittal to EPA. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table - 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	For the ozone NAAQS, the pertinent emission limitations and schedules are contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were submitted on June 13, 2007, in recently submitted regulatory revisions listed below and in the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c). ▪ Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation, November 21, 2006 ▪ Regulation No. 1113, Open Burning Regulation, May 2, 2007 ▪ Regulation No. 24, Section 46, Crude Oil Lightering, May 2, 2007 ▪ Regulation No. 1148, Combustion Turbine Generator Emissions, September 11, 2007 ▪ Regulation No. 1144, Stationary Generator Emissions, November 1, 2007 ▪ Regulation No. 43, Not To Exceed California Heavy Duty Diesel Engine Standards, November 29, 2001 [1] ▪ Regulation No. 45, Excessive Idling Of Heavy Duty Vehicles, August 12, 2005 [2] The regulatory revisions listed above and the following regulations listed below that are in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.	40 CFR 52.420(c)

1 Now codified under Regulation 1143 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

2 Now codified under regulation 1145 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

		▪ Regulation No. 1, Definitions And Administrative Principles ▪ Regulation No. 4, Particulate Emissions From Fuel Burning Equipment ▪ Regulation No. 5, Particulate Emissions From Industrial Process Operations ▪ Regulation No. 6, Particulate Emissions From Construction And Materials Handling ▪ Regulation No. 7, Emissions From Incineration Of Noninfectious Waste ▪ Regulation No. 8, Sulfur Dioxide Emissions From Fuel Burning Equipment ▪ Regulation No. 9, Emissions Of Sulfur Compounds From Industrial Operations ▪ Regulation No. 10, Control Of Sulfur Dioxide Emissions Kent And Sussex Counties ▪ Regulation No. 12, Control Of Nitrogen Oxides Emissions ▪ Regulation No. 14, Visible Emissions ▪ Regulation No. 18 , Particulate Emissions From Grain Handling Operations ▪ Regulation No. 22, Restriction On Quality Of Fuel In Fuel Burning Equipment ▪ Regulation No. 24, Control Of Volatile Organic Compound Emissions ▪ Regulation No. 26, Motor Vehicle Emissions Inspection Program ▪ Regulation No. 27, Stack Heights ▪ Regulation No. 29, Emissions From Incineration Of Infectious Waste ▪ Regulation No. 31, Low Enhanced Inspection And Maintenance Program ▪ Regulation No. 32, Transportation Conformity Regulation ▪ Regulation No. 34, Emission Banking And Trading Program ▪ Regulation No. 35, Conformity Of General Federal Actions To The State Implementation Plans ▪ Regulation No. 36, Acid Rain Program ▪ Regulation No. 37, NOx Budget Program ▪ Regulation No. 39, Nitrogen Oxides	

		Budget Trading Program ▪ Regulation No. 40, National Low Emission Vehicle Program ▪ Regulation No. 1141, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products ▪ Regulation No. 42, Specific Emission Control For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.	
§110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.	Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.	40 CFR 52.420(c)
§110(a)(2)(C)	Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;	Delaware implements its Construction and Operation Permit Program requirements under Regulation Nos. 1102, and 25[3] of the State of Delaware Regulations Governing the Control of Air Pollution. Delaware implements its Prevention of Significant Deterioration (PSD) Program requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution. Delaware implements its Emission Offset Provision (EOP) requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution." Other aspects of Delaware's program for enforcement are found in those provisions of Regulation 25, Regulation 11 and Regulation 17 as well as the source monitoring, source testing and test methods, and, recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the	40 CFR 52.420(c)

3 Now codified under regulation 1125 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

		approved Delaware SIP as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above. [4] These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS. For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.	
§110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.	
§110(a)(2)(E)(iii)	(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;	The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.	
§110(a)(2)(F)	Require, as may be prescribed by the Administrator— (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;	§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary. §110(a)(2)(F)(ii): Specific reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary. Other aspects of Delaware's program for requiring installation and maintenance of monitoring equipment, periodic emissions reporting, is found in the source monitoring, source testing and test methods, and recordkeeping	40 CFR 52.420(c)

4 Regulation Numbers 41 and 42 are now codified under regulations 1141 and 1142 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

		and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP, 40 CFR 52.420(c), as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above. These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS. For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(F) will be addressed in future SIP revisions.	
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority*;*	State of Delaware Regulations Governing the Control of Air Pollution, Regulation 15, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in the SIP, and found at 40 C.F.R. 52.420(c), that fulfill the contingency plan requirement for the ozone NAAQS. For the fine particulate matter NAAQS, the emergency episode plan will be addressed in future SIP revisions.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. All of Delaware is in the Philadelphia-Wilmington-Atlantic City ozone nonattainment area. On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area and submitted the RACT SIP on March 29, 2007 and was updated on May 2, 2007 to cover Crude Oil Lightering operations. Delaware has also submitted those recently submitted regulatory SIP revisions discussed under	40 CFR 52.420(c)

		section 110(a)(2)(A) above. The pertinent emission limitations and schedules are contained in these submitted plans. The regulations in Delaware's approved SIP that are listed in 40 CFR Part 52, Subpart I related to nonattainment areas will continue to comply with Subpart D requirements and which could not have been approved if they had not met Subpart D requirements. For the fine particulate matter NAAQS, the applicable Part D requirements have not yet come due and will be addressed in future SIP revisions.	
§110(a)(2)(J) (PSD)	Meet the applicable requirements of … part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.	
§110(a)(2)(K)	Provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;	On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area which contained the required modeling. For the fine particulate matter NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.	

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) **§110(a)(2)(A) Requirement:** Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as

fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(2)(A) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate ($PM_{2.5}$) NAAQS. For the fine particulate ($PM_{2.5}$) NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del. C., Chapter 60. This authority is applicable to the ozone as well as the fine particulate ($PM_{2.5}$) NAAQS.

(B) **§110(a)(2)(B) Requirement:** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's SIP already contains other elements, namely, Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution addressing §110(a)(A) as discussed in the section 1.0 and the table thereto of this document.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for both the ozone and fine particulate matter NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for

comparison to each NAAQS as required by 40 CFR Part 58. Seasonal (April – October) ozone monitoring is currently performed at various locations throughout Delaware.

- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the scheduled prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network DNREC provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a summary table of all the changes to the network. This summary also provides for a description of each change, the reason for each change, and any other information relevant to the change. DNREC submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the scheduled prescribed by the U.S. EPA in 40 CFR Part 58.

(C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(C) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate ($PM_{2.5}$) NAAQS. For the fine particulate ($PM_{2.5}$) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Air Quality Management Section function exercises its programmatic authority to utilize the enforcement powers set out in 7 Del. C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del. C. §6013 entitled "Criminal penalties"; and 7 Del. C. §6018

entitled "Cease and desist order." Delaware will continue to operate this program and may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) **§110(a)(2)(D) Requirement:** Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 [5] and 115 [6] (relating to interstate and international pollution abatement).

Delaware's Plan: The implementation plan for Delaware and recently submitted SIP revisions presently contain adequate provisions prohibiting sources from

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5 §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

6 §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- 110(a)(2)(D)(i)(I): Major stationary sources for 8-hour ozone and $PM_{2.5}$ are currently subject to Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution. [7] Delaware sources are subject to the Clean Air Interstate Rule (CAIR) Federal Implementation Plan (FIP) for annual and seasonal ozone, and for sulfur dioxide. In the adoption of CAIR EPA has indicated that compliance with CAIR satisfies a States §110(a)(2)(D)(i) obligations relating to "significant contribution" and "interference with maintenance" requirements, and the State of Delaware currently satisfies the CAIR requirements by relying on the CAIR FIP. [8] In addition, because Delaware believes that more than CAIR is necessary to mitigate transport, Delaware has promulgated Regulation No. 1146, Electric Generating Unit Multi-Pollutant Regulation, Regulation No. 1142, Section 2, Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and Regulation No. 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units (i.e., generally, Delaware's CAIR covered units). These regulations have, or are in the process, of being submitted to the EPA as revisions to Delaware's SIP.

- 110(a)(2)(D)(i)(II): PSD requirements under Section 3 of Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution. Major sources are subject to NNSR and PSD permitting programs implemented in accordance with EPA's interim guidance calling for use of PM_{10} as a surrogate for $PM_{2.5}$ related to the non-attainment and PSD NSR program requirements.

  - The State of Delaware confirms that it is meeting this requirement for the use of PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NNSR programs.

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7 Now codified under regulation 1125 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

8 If Delaware later decides to adopt its own program to replace the CAIR FIP, that program will be submitted to the EPA as a SIP revision.

- The EPA's guidance[9] advises that the section 110(a)(2)(D)(i) requirement related to protection of visibility is deferred until such time as Delaware submits its Visibility SIP. Delaware's Visibility SIP will assess whether there is interference with measures required to be included in the applicable implementation plan for any other State to protect visibility.

- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) ***§110(a)(2)(E) Requirement:*** Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,[10] and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §§110(a)(2)(E)(i) and (ii) are not applicable to Delaware as discussed in section 1.0 and the table thereto of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware assures EPA that it has adequate authority under state law pursuant to 7 *Del. C.* Chapter 60 to carry out its SIP obligations with respect to both the 8-hour ozone and the fine particulate ($PM_{2.5}$) NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may makes changes that it

9 William T. Harnett Guidance Memorandum, dated August 15, 2006, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)()2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ NAAQS."

10 §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

(F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §§110(a)(F)(i) and (ii) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate ($PM_{2.5}$) NAAQS. For the fine particulate ($PM_{2.5}$) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 Del. C. Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.

(G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority; [11]

11 Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring

Delaware's SIP contains an emergency episode plan for ozone as discussed in the section 1.0 and the table thereto of this document. For the fine particulate ($PM_{2.5}$) NAAQS, the emergency episode plan will be addressed in future SIP revisions.

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, 7 Del. C., Chapter 60 provides authority comparable to section 303 in that Delaware may seek permanent, preliminary injunctions and temporary restraining orders (7 Del. C. § 6005) and issue cease and desist orders for violations (7 Del. C. § 6018). Under 7 Del. C., § 6003, any unpermitted emission which may cause imminent or substantial danger to pubic health, safety, welfare or the environment is a violation of 7 Del. C., Chapter 60.

(H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

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suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(I) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM2.5) NAAQS. For fine the particulate matter NAAQS, the remaining applicable requirements under Part D will be addressed in future SIP revisions.

(J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection). [12]

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- Regulation No. 1132, Transportation Conformity, of the State of Delaware Regulations Governing the Control of Air Pollution provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide the forum for consultation with local governments. 13 Delaware's MPOs are: (1) WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. All SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. Delaware believes the public notice and hearing processes also fulfills the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

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12 §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

13 Regulation 1132 was submitted as a revision to the Delaware SIP in a separate submittal.

- DNREC makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels such as Ozone Action Days, Air Quality Action Days, and DNREC's website. DNREC provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. DNREC forecasts daily ozone and particle levels and issues e-mails to the public, businesses and the media via AirAlerts. AirAlert e-mail forecasts and notifications are free to the public.

  For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(J) as discussed in the section 1.0 and the table thereto of this document. For the fine particulate ($PM_{2.5}$) NAAQS, any remaining applicable requirements under §110(a)(2)(J) will be addressed in future SIP revisions.

(K) **§110(a)(2)(K) Requirement:** Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

For the ozone NAAQS, Delaware's SIP or recently submitted SIP revisions contains required modeling as discussed in the section 1.0 and the table thereto of this document. For the fine particulate ($PM_{2.5}$) NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.

Delaware's Plan: Delaware will continue to perform modeling as required under the CAA to demonstrate attainment), but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit the Air Quality modeling data as part of Delaware's relevant SIP submissions and through federal grant commitments or in other ways that EPA may request.

(L) **§110(a)(2)(L) Requirement:** Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del. C. §S 6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) **§110(a)(2)(M) Requirement:** Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del. C. § 6006 and 6010 and 29 Del. C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).