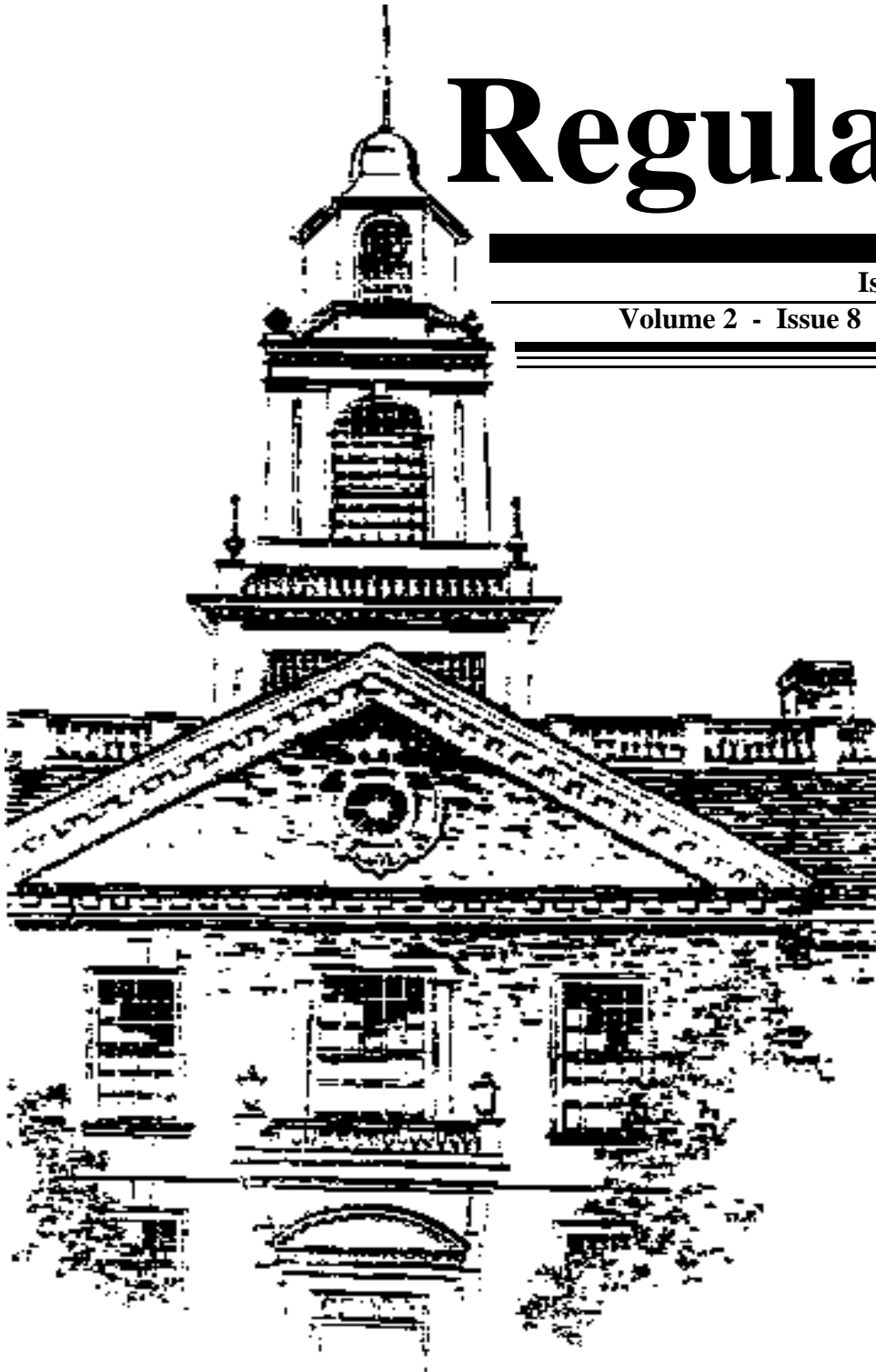

Delaware Register of Regulations



Issue Date: February 1, 1999

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Pages 1303 - 1419

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before January 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1304

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

2:6 **Del. R.** 1000 - 1010 (December 1, 1998) refers to Volume 2, Issue 6, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

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The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 Del.C. §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DELAWARE SOLID WASTE
AUTHORITY**

Statutory Authority: 7 Delaware Code
Chapter 64 (7 Del.C. Ch. 64)

PUBLIC NOTICE

Pursuant to 7 Delaware Code, Section 6403 (i), 6403 (j), 6403 (k), 6403 (l), 6406 (a) (11), 6406 (a) (13), 6421 and other pertinent provisions of 7 Delaware Code, Chapter 64, the Delaware Solid Waste Authority (DSWA) will conduct a hearing to consider an amendment to the following documents:

(a) Statewide Solid Waste Management Plan (adopted May, 1994), and

(b) **Regulations of the Delaware Solid Waste Authority (adopted October 1997)**

(c) Differential Disposal Fee Program (new fee structure)

The hearing is to provide opportunity for public comment on the proposed amendments. The public record will close at the close of the Hearing.

The hearing will be held February 23, 1999 at 7:00 p.m. in the Public Meeting Room of the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, DE 19903.

Copies of the proposed amendments will be available

February 1, 1999 from the Delaware Solid Waste Authority upon request. The proposed amendments will also be published in the February 1, 1999 edition of the "Register of Regulations."

If you have any questions regarding the hearing, please contact T. E. Houska, Chief of Administrative Services, Delaware Solid Waste Authority, P.O. Box 455, Dover, Delaware 19903-0455 or call (302) 739-5361. Mr. Houska can also be reached by e-mail: teh@dswa.com.

T. E. Houska II, P.E.
Chief of Administrative Service

Statewide Solid Waste Management Plan (adopted May, 1994)

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I. PURPOSE AND AUTHORIZATION

These Regulations* are adopted pursuant to the Act to achieve the goals set forth therein.

II. DEFINITIONS

"Act" means the Delaware Solid Waste Authority Act, 7 Del. C. Ch. 64.

"CEO" means Chief Executive Officer and Manager of DSWA.

"Chairman" means the Director designated by the Governor as chairman of DSWA in accordance with 7 Del. C. Section 6403(a).

"Department" means the Department of Natural Resources and Environmental Control of the State of Delaware.

"Directors" means the directors of DSWA holding office in accordance with 7 Del. C. Section 6403.

"Dry Waste" means wastes including, but not limited to, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"DSWA" means the Delaware Solid Waste Authority, an instrumentality of the State of Delaware, existing pursuant to the Act.

"Hazardous Waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, or chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Sections 261.31, 261.32 and 261.33 of the Delaware Regulations Governing Hazardous Waste and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the Delaware Regulations Governing Hazardous Waste.

"Industrial Process Solid Waste" means solid waste produced by or resulting from industrial applications, processes or operations and includes, by way of example and not by way of limitation, sludges of chemical processes, waste treatment plants, water supply treatment plants, and air pollution control facilities and incinerator residues, but does not include the solid waste generated at an industrial facility which is comparable to municipal solid waste, such as cafeteria waste, cardboard, paper and pallets, crates or other containers constructed of and containing non-hazardous

combustible material.

* The Department also has promulgated regulations pertaining to solid waste disposal.

"Junkyard" means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

"Licensee" means a person holding a license issued by DSWA pursuant to Article III of these Regulations.

"Municipality" means a county, city, town or other public body of the State of Delaware.

"Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other duly established legal entity.

"Solid Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or water pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear, or by-product materials defined by the Atomic Energy Act of 1954, as amended, or materials separated on-site by the generator thereof for further use, service or value.

"Solid Waste Facility" means any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility or project operated by, on behalf of, or under contract with DSWA.

"Toxic Substance" means any chemical substance or mixture that may present an unreasonable risk of injury to health or the environment.

"Transfer Station" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling or disposal.

III. COLLECTION AND LICENSING

3.01 No person shall collect, transport, and/or deliver solid waste in the State of Delaware without first having obtained a license from DSWA, provided, however, that:

a. persons transporting and delivering solid waste that they created on their premises resulting from their activities shall not be required to obtain a license therefore; and

b. persons collecting, transporting and/or delivering solid waste in the course of their employment by a person holding a license from DSWA shall not be required to obtain a license therefore; and

c. a license shall not be required for the collection, transportation, or delivery exclusively of dry waste, leaves, street and storm sewer cleaning materials, agricultural wastes or those materials identified in paragraph 4.02 (a) - (e) of these Regulations.

~~3.02 Each Licensee shall deliver solid waste collected in Delaware to a Solid Waste Facility. DSWA, based upon the CEO's determination of threat to public health or welfare or other emergency, may designate a specific Solid Waste Facility.~~

3.02 With respect to solid waste delivered to Solid Waste Facilities, the CEO, based upon a determination of threat to public health or welfare or other emergency, may designate a specific Solid Waste Facility for use.

3.03

a. Each Licensee shall clearly display on both sides of the vehicle:

i. the license stickers provided by DSWA which are the property of DSWA and subject to cancellation, suspension and/or revocation. The license stickers shall be legible at all times and shall be placed in an area of high visibility to allow immediate identification by DSWA Weighmasters and Compliance Officers. License stickers shall be not be placed on fuel or hydraulic tanks or reservoirs, or areas where the operation of mechanical parts would impair the visibility of stickers;

ii. the Licensee's business name with letters at least three (3) inches high and of a color that contrasts with the color of the vehicle. No name other than the Licensee's business name shall be displayed. A regularly used business logo may also be displayed.

b. Licensees shall maintain business offices and phone numbers as follows:

i. Licensees who collect on a yearly average 100 tons per month or more:

(a) each Licensee shall maintain a manned business office location or locations and designate a representative in responsible charge thereof;

(b) each Licensee shall provide his business office street address in addition to a Post Office Box;

(c) telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by a responsible and authorized person at the main office during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering machine shall not satisfy this; and

(d) notification regarding any change of business location or telephone number shall be provided to

DSWA in writing at least fifteen (15) days prior to such change.

ii. Licensees who collect on a yearly average less than 100 tons per month:

(a) each Licensee shall provide a street address in addition to a Post Office Box for the business office or dwelling that is able to receive correspondence. A Post Office Box shall not satisfy this requirement;

(b) telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by the Licensee during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering service may be utilized. An answering machine shall not satisfy this requirement; and

(c) notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) days prior to such change.

3.04

a. Each Licensee shall maintain insurance at the following minimum amounts:

i. Automobile liability: \$350,000 combined bodily injury and property damage per occurrence;

ii. General liability: bodily injury \$300,000 per occurrence; property damage: \$100,000 per occurrence; and

iii. Workman's Compensation as required by law.

b. Each Licensee shall provide to DSWA new certification of the coverages specified in subsection 3.04(a) including a certification within ten (10) days of renewal. Each such certification of insurance shall provide that DSWA receive at least thirty (30) days advance notice of any canceled, discontinued, or diminished coverage.

3.05 Each Licensee shall maintain collection vehicles to comply with the following minimum requirements:

a. Each collection vehicle body shall be maintained to prevent fluids from discharging onto the surface of the ground.

b. Each collection vehicle body shall be capable of being readily emptied.

c. Each collection vehicle shall be kept in a as much of a sanitary condition as to control the presence of vectors.

d. Containers, boxes, and other devices excluding open top trailers referred to as roll-offs, used by Licensees for collection of solid waste in excess of thirty (30) gallon capacity shall be enclosed to reduce fluid leakage or collection of water.

e. Each collection vehicle shall be equipped so that it can be readily towed, and maintained in good operational condition for safe and stable operation and/or navigation in

or about a Solid Waste Facility.

f. Each collection vehicle used or proposed for use by an applicant or Licensee and the contents of any collection vehicle shall be subject at all times to inspection by DSWA.

g. All roll-off containers used for collecting, transporting and delivering of solid waste generated within the State of Delaware shall display stickers issued by DSWA near the bottom and front of both sides of each roll-off. Solid waste described in Section 4.03 shall be exempt from this requirement.

3.06 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste.

~~a. Solid waste shall not be processed, scavenged, modified, or altered except that it may be compacted and/or unloaded and reloaded at a transfer station not in violation of Article IX of these Regulations.~~

a. Solid waste shall not be processed, scavenged, modified, or altered unless in compliance with applicable laws and regulations.

b. Solid waste shall be suitably enclosed or covered to prevent littering or spillage of solid waste or fluids.

~~c. Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours, except when the Solid Waste Facility is closed for the entire day when the twenty-four period expires; in that event, the collection vehicle shall discharge the solid waste at a Solid Waste Facility on the next day that a Solid Waste Facility is open.~~

c. Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours unless the solid waste is being delivered to a Solid Waste Facility and the facility is closed for the entire day when the twenty four hour period expires, in which case the collection vehicle may discharge the solid waste at the facility on the next day that the facility is open.

d. Any spillage of solid waste shall be immediately cleaned up and removed.

e. No undue disturbance shall be caused in residential areas as a result of collection operations.

3.07 All collection vehicles shall be owned in the name of the Licensee or leased in the name of the Licensee. Upon submission of an application for a license each applicant shall provide a copy of a valid motor vehicle registration card for each collection vehicle. If the collection vehicle is not owned by the applicant, a copy of a written motor vehicle lease agreement shall also be submitted with the application.

3.08 Each Licensee shall provide and continuously maintain backup capability to allow for continued collection, transportation and/or delivery of solid waste in the event of equipment breakdown. As a minimum each Licensee,

except for municipalities with a written agreement with another municipality for such backup, shall own and/or lease, in the name of the licensee, at least two fully and continuously operational collection vehicles, except for down time for routine maintenance.

3.09 Only enclosed compactor type vehicles or "roll-offs" with a cover sufficient to prevent any spillage of, loss of, or littering of solid waste shall be used by Licensees for collection, transportation, or delivery of solid waste, except for vehicles utilized only to collect, transport or deliver the solid wastes referenced in Section 4.02 (a-e) and Section 4.03, *infra*, or oversized bulky waste, such as couches and refrigerators. Such vehicles used for oversized bulky waste shall not satisfy part or all of the Section 3.08 requirement that each Licensee own and/or lease at least two fully and continuously operational vehicles. An exception to the requirements of the first sentence of this section may be authorized by the CEO or his designee in circumstances where it is physically impossible to provide solid waste collection services with such vehicles.

3.10

a. With the exception of any municipality, each applicant for a license and each Licensee shall provide to DSWA and maintain a bond under which the Licensee shall be jointly and severally bound with a corporate surety qualified to act in the Courts of Delaware to DSWA for amounts due to DSWA for fees or charges for services.

b. In lieu of corporate surety, the applicant or Licensee may provide security for its bond by depositing with DSWA, one of the following in an amount at least equal to the amount of the bond:

i. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills; or

ii. bonds or notes of the State of Delaware; or

iii. bonds of any political subdivision of the State of Delaware; or

iv. certificates of deposit or irrevocable letters of credit from any state or national bank located within the United States; or

v. United States currency, or check for certified funds from any state or national bank located within the United States.

c. The amount of the bond specified in paragraph 3.10 (a) shall be based upon the total solid waste tonnage charged by the Licensee at Solid Waste Facilities during for the month of November immediately preceding the license year for which the license is issued in accordance with the following schedule:

"TONNAGE CHARGED FOR PRIOR NOVEMBER"	AMOUNT OF BOND
Less than or equal to 750 tons	(minimum) \$5,000
Greater than 750 tons but less than or equal to 1,500 tons	\$25,000
Greater than 1,500 tons	\$50,000

If the Licensee has expanded or acquired its business since the preceding November, then the total tonnage for November and Bond amount will be adjusted to account for such increase. By reference to the accounts, business, or assets acquired, an estimate will be made of what the charges in November would have been if the Licensee had been operating the newly acquired accounts, business, or assets at that time.

3.11 Any person desiring to collect, transport, and/or deliver solid waste in the State of Delaware shall submit a completed application for license to DSWA on forms provided by DSWA substantially in the form set forth in Appendix "A" of these Regulations. DSWA shall approve or deny license applications within thirty (30) days of receipt of a completed application.

3.12 DSWA may require information to supplement that requested in Appendix "A" in reviewing license applications.

3.13 The license period shall be July 1 to June 30 annually. Applications for license renewal shall be submitted to DSWA at least thirty (30) days prior to the expiration date.

3.14 Before any additional collection vehicle or substitute collection vehicle is utilized for the collection, transportation, and/or delivery of solid waste, the Licensee shall submit to DSWA the following:

- a. The name, address and telephone number of the owner of the vehicle.
- b. The state motor vehicle registration number.
- c. A description of chassis by year and manufacturer.
- d. A description of the body by year and manufacturer.
- e. The legal weight limit of the vehicle.
- f. The volume of the body of the vehicle in cubic yards.
- g. Evidence of the insurance coverage required by this Article.

3.15 Each license shall contain the following:

- a. Name and address of the Licensee.

- b. A listing of all collection vehicles under the license.
- c. The location or locations for delivery of solid waste for each collection vehicle.

d. Special license conditions regarding collection, transportation, and/or delivery of solid waste, as specified by DSWA.

3.16 Each license and/or collection vehicle may be transferred subject to prior approval of DSWA. Except for a municipality with a written agreement with another municipality for backup capacity, no person shall be entitled to collect, transport and/or deliver solid waste under another person's license.

3.17 Notwithstanding anything to the contrary contained in these Regulations, a Licensee may operate a replacement vehicle on a temporary basis for a period of fifteen (15) days; provided further, that the licensee shall provide DSWA an original signed letter on company letterhead providing the information listed in Section 3.14 of these Regulations. An original letter must be submitted for each day of operation until DSWA license stickers are properly displayed on the vehicle or the vehicle is removed from temporary service. Letters must be taken to the weighstation of the Solid Waste Facility.

3.18 No license shall be issued to any person who:

- a. has an account with DSWA that is past due in accordance with DSWA policies or
- b. is obligated to file a report in accordance with Section 8.02 of these Regulations and has not done so for the immediately preceding calendar year.

3.19 Any person who first collects and transports solid waste within the State of Delaware, without having first obtained a license under this Article, shall not be issued a license under this Article, until the expiration of one hundred twenty (120) days after the last day on which such collection and transportation without a license occurred, as determined by the CEO, or his designee.

3.20 Any Licensee who does not maintain his principal place of business in Delaware shall designate an agent, by name and street address (box number not acceptable), for service of process within Delaware. The agent shall be either an individual resident in Delaware or a corporation authorized under Title 8 of the Delaware Code to transact business in Delaware.

3.21 Before a license application is approved or denied, DSWA shall determine whether the applicant is able and reasonably certain to comply with these Regulations. Such determination may take into account any relevant factors including, but not limited to, the prior conduct of the

applicant or any person, as defined herein, who is employed by or is otherwise associated with the applicant and may significantly affect the applicant's performance as it is related to the licensed activities. If the application is denied, the determination shall be reduced to writing and include the rationale for denial. Any person denied a license shall be entitled to request a hearing on such determination before the Directors of DSWA in accordance with paragraph 11.01 (b) hereof.

3.22 No license shall be issued to any person who:

- a. holds or has held a license from DSWA which has been revoked;
- b. holds or has held a license from DSWA which has been suspended, for such period as the license is suspended.
- c. holds or has held an interest in any Licensee whose license from DSWA has been revoked;
- d. holds or has held an interest in any Licensee whose license from DSWA has been suspended, for such period as the license is suspended.
- e. owns, in whole or in part, solid waste operating assets, including vehicles and routes, which were acquired from a Licensee whose license from DSWA was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a license may be required to produce records and other information to demonstrate that they comply with this paragraph before a license will be issued.

3.23 A Licensee shall give written notice to DSWA at least seven (7) days in advance of any of the following:

- a. sale or conveyance of a significant portion of its assets;
- b. sale or conveyance of a significant portion of the equity interest (e.g. stock) held in it;
- c. purchase or other acquisition of a significant portion of the assets of another Licensee;
- d. purchase or other acquisition of a significant portion of the equity interest in another Licensee. For purposes of this paragraph, a significant portion shall mean one-half. Fragmentation of a transfer into smaller portions shall not be used to avoid the requirements of this paragraph.

IV. USE OF SOLID WASTE FACILITIES

4.01

- a. ~~Except as otherwise provided in this Article:~~
 - i. ~~All solid waste generated within the State of Delaware shall be delivered to and disposed of at a Solid Waste Facility;~~
 - ii. ~~The owners and occupants of all lands, buildings, and premises located within the State of Delaware, and all those persons acting for them or under contract with them, shall use only Solid Waste Facilities for~~

~~the disposal of solid waste generated within the State of Delaware.~~

4.01

- a.
 - i. All solid waste generated within the State of Delaware shall be delivered to and disposed of at a Solid Waste Facility or some other duly licensed or permitted facility.
 - ii. The owners and occupants of all lands, buildings, and premises located within the State of Delaware, and all of those acting for them or under contract with them, shall use only Solid Waste Facilities or other duly licensed or permitted facilities for the disposal of solid waste generated within the State of Delaware.
- b. Subject to the provisions of Section 3.02 and 3.18 of these Regulations, solid waste generated within the State of Delaware shall be delivered to a Solid Waste Facility or other duly licensed or permitted facility.
- c. Persons delivering solid waste to a Solid Waste Facility shall pay to DSWA the applicable fees and user charges.

4.02 The following solid wastes shall not be delivered to a Solid Waste Facility:

- a. Hazardous wastes
- b. Explosives
- c. Toxic substances
- d. Pathological and infectious wastes
- e. Radioactive wastes
- f. Solid wastes, as determined by the CEO or his designee, which will, because of their quantity, physical properties, or chemical composition, have an adverse effect on the Solid Waste Facility, or the operation of the Solid Waste Facility, or if an effective means of risk and cost allocation cannot be achieved.
- ~~g. Solid waste generated outside the State of Delaware.~~

4.03 The following solid waste may be delivered to a Solid Waste Facility for disposal, but need not be, upon payment of the appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by Section 4.02:

- a. Agricultural waste generated on a farm.
- b. ~~Dirt, sand, crushed rock, concrete, asphalt, inert demolition and construction debris, trees, bushes, branches, leaves, and material collected in street and storm sewer cleaning.~~ Dry waste.
- c. Tires.
- d. Non-hazardous waste resulting from emergency clean-up actions of the Department.
- e. Industrial process solid waste exempted by Section 5.03 (b).

4.04 In the event that an invoice generated from the charging of fees or user charges at a Solid Waste Facility is not paid in accordance with DSWA credit policies the license may be revoked and/or the right to use Solid Waste Disposal Facilities may be denied to the user. Before the license revocation and/or denial of use, the user shall have a hearing before the Directors of DSWA, and the user shall be given at least ten (10) days notice of the hearing. Otherwise, the procedure for the hearing shall be as set forth in paragraph ~~4~~ 10.01 (b) (ii)-(v) of these Regulations.

V. INDUSTRIAL PROCESS SOLID WASTE

5.01

a. Any person causing or allowing industrial process solid waste to be delivered to any Solid Waste Facility for disposal shall obtain the approval of DSWA prior to commencement of such disposal; provided however, that where more than one person is involved in the generation and delivery of a particular industrial process solid waste, approval of DSWA obtained by one person shall be sufficient.

b. In the event that there are any risks or additional costs involved in accepting any industrial process solid wastes, the CEO may impose an industrial process solid waste disposal surcharge to compensate DSWA for such risks and additional costs, including administrative expenses and overhead. The following factors shall be considered in determining the amount of such industrial process solid waste surcharge:

- i. Quantity of waste to be disposed of;
- ii. Degree of risk associated with such disposal;
- iii. Additional handling, processing and disposal

costs;

iv. Additional administrative expenses and overhead;

v. Additional environmental protection controls including monitoring.

c. The industrial process solid waste surcharge shall be set by the CEO, without notice and public hearing thereon, and may be done on a case by case basis.

5.02 Any person causing or allowing industrial process solid waste to be delivered to a Solid Waste Facility operated by or on behalf of DSWA shall be deemed to have agreed to indemnify and hold harmless DSWA from any liability arising from disposal of such industrial process solid waste and to have agreed to reimburse DSWA for any costs reasonably incurred to protect against or reduce any risk resulting therefrom; provided, however, such person, if such person has not caused or allowed the delivery of a hazardous substance within the meaning of the Comprehensive Environmental Response Compensation Liability Act (CERCLA), as amended, 42 USC Section 9601, et.seq., shall

not be liable under this subsection to DSWA for harm or damage caused by the negligence of DSWA.

5.03 It shall be the responsibility of each generator of industrial process solid waste, in addition to the person collecting, transporting and delivering it, to obtain the approval of DSWA for disposal of industrial process solid waste at the Solid Waste Facility and to assure that such waste is delivered to the Solid Waste Facility of DSWA for disposal. Such solid waste shall be exempted from the requirement of disposal in a Solid Waste Facility if:

a. DSWA refuses to approve the disposal of such waste at a Solid Waste Facility; or

b. the generator of such waste determines or agrees to have such waste disposed of at another properly licensed or permitted facility;

c. the solid waste is described in Section 4.02 of Article IV.

5.04 Any person aggrieved by a determination of the CEO or his designee, under this Article or subsection 4.02(f) of Article IV, may seek review thereof by the Directors of DSWA in accordance with Section 6427 (f) of the Act, and Section ~~4~~ 10.01 of these Regulations.

VI. OTHER SOLID WASTE PROJECTS

6.01 No person shall finance, acquire, license, construct, maintain, operate, or use a solid waste disposal, processing, or recycling project in the State of Delaware that is neither owned nor operated by, on behalf of, or at the request of DSWA.

6.02 No person shall cause or assist in the financing, acquiring, licensing, constructing, maintaining, or operating of a solid waste disposal, processing, or recycling facility in the State of Delaware, that is neither owned nor operated by, on behalf of, or at the request of DSWA.

6.03 This Article VI shall not apply to:

a. Projects dedicated exclusively to the disposal of dry waste, hazardous waste, agricultural waste, explosives, toxic substances, radioactive waste, or tires;

b. Projects used exclusively as transfer stations;

c. Recycle centers for source separated materials, such as aluminum cans;

d. Junkyards;

e. Projects dedicated exclusively to the disposal of industrial process solid waste that are lawfully permitted for the disposal of such industrial solid waste.

f. Projects dedicated exclusively to the disposal of solid waste generated outside the State of Delaware.

VII. OPERATING IN A SOLID WASTE FACILITY

7.01 All vehicles entering a Solid Waste Facility to dispose of solid waste shall proceed to the appropriate scale. Each vehicle shall come to a full stop before driving onto the scale, for weighing in or for weighing out. Quick stopping or starting on the scales will not be permitted. All personnel must remain in the vehicle unless directed by the Weighmaster to come to the scale house window. After weighing, the vehicle must not leave the scales until authorized to do so by the Weighmaster and must proceed to the area designated for disposal of the quantity and type of waste that is carried in the vehicle.

7.02 After weighing and at the direction of the Weighmaster, each vehicle shall proceed to the area designated. Spotters at the landfill face or on the tipping floor shall direct the vehicles to a dumping location. At small load facilities, waste shall be disposed only in the containers that have been provided. The contents of each vehicle shall be discharged as quickly as possible and the vehicle shall leave as directed by the operating contractor. Clean-up is allowed only at designated locations. No roll-off boxes will be dropped anywhere in a Solid Waste Facility without the express approval from a DSWA representative.

7.03 Each vehicle operator shall exercise caution, due care, and safe procedures in all operations at the Solid Waste Facility. The speed limit on the facility roads is 25 miles per hour except where a lower speed limit is indicated. Vehicle operators shall follow directions from the DSWA representative or the operating contractor in all cases of emergency.

7.04 No hand sorting, picking over, or scavenging of solid waste will be permitted at any time.

7.05 All vehicle operators and other personnel proceed onto the landfill at their own risk. DSWA shall not be liable for acts or omissions of its contractors, persons using a Solid Waste Facility, or other third persons in or about a Solid Waste Facility.

7.06 Persons under the age of 18 are not allowed to enter any Solid Waste Facility in waste collection and disposal vehicles.

7.07 No loitering will be permitted in any Solid Waste Facility.

7.08 DSWA reserves the right to redirect vehicles to alternate locations within the Solid Waste Facility, if for any reason in the opinion of DSWA's representative, the original location cannot handle the load or type of material.

7.09 There shall be no smoking in any Solid Waste Facility except in areas where smoking is expressly permitted.

7.10 The Directors of DSWA from time to time may adopt and post other rules for Solid Waste Disposal Facilities. It is the responsibility of Licensees and other persons using Solid Waste Disposal Facilities to familiarize themselves with and to obey such rules.

7.11 Any vehicle that is immobile and obstructing facility operations shall be moved to a non-conflicting area by DSWA representatives after notifying the Licensee's driver. The Licensee's driver will be given reasonable time to contact his office either through radio or telephone. If the blocking vehicle poses a safety or fire hazard, it will be removed immediately after giving notice to the driver. Licensee shall also give written instructions to drivers on proper procedures for towing.

7.12 To prevent material from falling off vehicles and to minimize litter, all open vehicles, including but not limited to pick-up trucks, entering a Solid Waste Facility to dispose solid waste shall be sufficiently secured through the use of tarpaulins or ropes or netting or enclosures sufficient to prevent the material from falling off the vehicles.

7.13

a. DSWA shall have the right to require unloading of the contents of the vehicle hauling solid waste to any solid waste facility for the purpose of inspection.

b. If any hazardous wastes, explosives, toxic substance, pathological and infectious wastes, radioactive wastes, ~~or solid wastes generated outside the State of Delaware~~ are found, then the person delivering such waste to a Solid Waste Facility shall be subject to the sanctions that may be imposed under Section 11.02 for violation of Section 4.02 and sanctions for violation of other applicable laws and regulations and that person shall be notified and given an opportunity to remove properly all of the waste emptied from the solid waste collection vehicle at his expense. If that is not accomplished within four (4) hours of such notice, which shall be either in person or by telephone, or, if the person cannot be reached immediately, either in person or by telephone, DSWA may proceed to arrange for removal and proper disposal of the entire load and the person bringing such material to the Solid Waste Facility shall be liable to DSWA for all costs incurred by DSWA in arranging for proper disposal, including, without limitation, DSWA's out-of-pocket expenses, contractor's fees, disposal costs, overhead supervisory costs, legal fees, testing costs, and transportation costs.

VIII. RECYCLING

8.01 The following definitions shall apply to this subarticle:

"Recycling Center" means a facility, established pursuant to 7 Del. C. S6450 et seq., to receive recyclable materials. The Recycling Center includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers. Recycling Centers shall be known as 'RECYCLE DELAWARE' Centers.

"Recyclable Materials" mean those materials which have been source-separated by the generator thereof for recycling. Source separated materials must remain separate throughout the journey and are not to be re-combined for transport.

"Recycling" means the process by which solid waste is transformed or converted into usable material(s) or product(s).

"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.

8.02 All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than 'RECYCLE DELAWARE' Recycling Centers shall file annually with DSWA, on forms prescribed by DSWA, a report on the nature of the recycling activities conducted, the quantity and type of materials recycled, and the disposition of the materials recycled. Such reports will be due on April 30 of each year and shall be for the immediately preceding calendar year.

8.03 At a Recycling Center, no person shall:

- a. dispose of solid waste or litter;
- b. leave materials outside of recycling containers;
- c. deposit into a recycling container any material other than the specific recyclable material for which the recycling container is marked to receive;
- d. damage, deface, or abuse a recycling container;
- e. block or obstruct vehicles using or serving the Recycling Center;
- f. loiter;
- g. scavenge any Recyclable Material; or
- h. deposit Recyclable Material that has been collected from or by a Recycler.

8.04 Each container used for the collection of Recyclable Material must be clearly marked to prevent normal trash from being placed into the container, i.e., "RECYCLABLE MATERIAL ONLY" - "NO TRASH".

IX. TRANSFER STATION REQUIREMENTS

9.01 Any person operating a transfer station for solid waste within the State of Delaware shall;

a. prepare daily and maintain (for minimum period of three years after preparation) records of the solid waste handled at the transfer station showing the source and final disposition of such waste after removal from transfer station, including address of such final disposition. The records to be maintained shall be adequate to provide all information required by the Transfer Station Monthly Solid Waste Report, annexed hereto as Exhibit B;

b. submit the report required by paragraph 9.01(a) of these Regulations and verify the accuracy thereof to DSWA on or before the twentieth (20th) day of the month following the month for which the report is compiled. The report shall be in the form of the Transfer Station Monthly Solid Waste Report, annexed hereto as Exhibit B;

c. make the records required to be maintained and preserved by paragraph 9.01(a) of these Regulations available for inspection by representatives of DSWA during normal business hours.

~~9.02 Solid waste originating or collected outside the State of Delaware shall not be mixed, combined, or aggregated at any transfer station with solid waste originating or collected within the State of Delaware that, in accordance with these Regulations, must be delivered to a Solid Waste Facility.~~

~~9.03 It shall be the responsibility of the transfer station operator and those persons hauling to and from the transfer station to assure that all solid waste collected within the State of Delaware, and required to be delivered to a Solid Waste Facility by these Regulations, be delivered to the appropriate Solid Waste Facility.~~

9.04 9.02 DSWA through its designated representatives shall have the right to inspect the transfer station and solid waste hauling vehicles entering and leaving the transfer station.

~~**X. INFECTIOUS WASTE (RESERVED)**~~~~**XI. XREVIEW, ENFORCEMENT AND SANCTIONS**~~~~**11.01 10.01**~~

a. Any person seeking a license or to have solid waste disposed of at a Solid Waste Facility who has been aggrieved by a determination of the CEO or his designee under Section 3.19, 3.21, 4.02, 4.04, 5.01 (b) or 5.04 of these Regulations may seek review thereof by the Directors of DSWA by filing a request for review with the CEO within fifteen (15) days of receipt of notice of such determination. The hearing shall be held in accordance with the paragraph of Section ~~11~~ 10.01 (b) of these Regulations.

b.

i. The person filing the request for review under paragraph ~~4~~ 10.01 (a) of these Regulations shall be provided notice by registered mail at least fifteen (15) days before the time set for the hearing. The person filing the request for the hearing shall bear the burden of proof.

ii. The person requesting the hearing may appear personally or by counsel and may produce competent evidence in his behalf. Upon the request of the person requesting the hearing or the CEO, the Chairman of DSWA shall issue subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to the material involved in such hearing.

iii. All testimony at the hearing shall be given under oath and the Chairman shall administer oaths and all Directors shall be entitled to examine witnesses.

iv. The hearing may be held as part of a regular meeting or a special meeting of the Directors of DSWA. Deliberation shall be held in executive session.

v. The decision of the Directors of DSWA shall be announced at a public meeting and shall be forwarded to the person requesting the hearing in written form by registered mail.

~~11.02~~ 10.02 Any person who violates a provision of these Regulations shall be subject to the following sanctions:

a. If the violation has been committed, a civil penalty of not less than One Hundred (\$100) Dollars and not more than Five Thousand (\$5000) Dollars shall be assessed;

b. If a violation continues for a number of days, each day of such violation shall be considered a separate violation;

c. If the violation is continuous, or there is substantial likelihood that it will reoccur, DSWA may seek a temporary restraining order, a preliminary injunction or permanent injunction;

d. Any person holding a license issued by DSWA who violates these Regulations shall be subject to revocation of such license, or suspension of such license for such period as determined by DSWA.

e. DSWA personnel are empowered to issue written notices of violations of these Regulations, without the need to employ the sanctions set forth above.

~~11.03~~ 10.03 Any person who violates a provision of these Regulations may be prevented from entering a Solid Waste Facility, as determined by the CEO or his designee, until that person is in compliance with these Regulations.

EXHIBIT A

TO: DELAWARE SOLID WASTE AUTHORITY
P. O. BOX 455
DOVER, DE 19903-0455

I hereby apply for a Solid Waste Collectors License for the period of July 1, 19____ through June 30, 19____, in accordance with the Regulations of the Delaware Solid Waste Authority. Accordingly, the following is submitted:

(Note: This application will not be processed unless all requested information is provided. Each application must be accompanied by:

1. Proof of insurances as required by Section 3.04;
2. The minimum Bond or Surety, as required by Section 3.10; and,
3. The vehicle information as requested in Attachment A of this application.)
4. A copy of your Delaware Business License.

1. Name of Applicant (Individual or Firm Name):
2. Company/Trade Name:
3. Business Office address/telephone numbers (One number MUST be a Delaware number):

OFFICE	ADDRESS	PHONE #
A.	_____ <i>Street City State Zip</i>	()
B.	_____ <i>Street City State Zip</i>	()
C.	_____ <i>Street City State Zip</i>	()

4. Name, address & telephone number of answering service if applicable:

NAME	ADDRESS	PHONE #
	_____ <i>Street City State Zip</i>	()
	_____ <i>Street City State Zip</i>	()
	_____ <i>Street City State Zip</i>	()

<i>Street City State Zip</i>	
------------------------------	--

5. Name of individuals having administrative responsibility at each business location:

NAME	ADDRESS	PHONE #
	<i>Street City State Zip</i>	()
	<i>Street City State Zip</i>	()
	<i>Street City State Zip</i>	()

6. Name, address, telephone number of Registered Agents or Authorized Representatives:

NAME	ADDRESS	PHONE #
	<i>Street City State Zip</i>	()
	<i>Street City State Zip</i>	()
	<i>Street City State Zip</i>	()

7. Type of Business:

Sole Proprietorship Partnership Municipality Corporation*

* If Non-Delaware Corporation, provide proof of Delaware Registration

8. Date Business was Established:

9. Delaware Business License Number: (contact Division of Revenue)

10. DNREC Waste Haulers Permit Number:

11. Delaware Business License Renewal Date:

12. Federal Taxpayer Identification Number:

13. Name & address of owners or partners in unincorporated business. Indicate respective ownership interest on a percentage basis:

NAME	ADDRESS	%
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	

14. Name & address of Officers, Directors, Shareholders holding in excess of 10% of issued Stock in incorporated business:

NAME	ADDRESS	%
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	
	<i>Street City State Zip</i>	

<i>Street City State Zip</i>	
<i>Street City State Zip</i>	
<i>Street City State Zip</i>	

15. Indicate if any partnership or corporation other than applicant has any interest, direct or indirect, in the license applied for, or in the business conducted under such license. (If so, state names & addresses and interest of the partnerships, corporations and principles involved, indicating the nature and extent of the interest.)

Not applicable
Provide details if applicable:

16. Indicate if any individual, partnership or corporation other than applicant receives or will receive (by way of rent, salary or otherwise) all or any portion of percentage of the gross or net profits or income derived from business conducted under license applied for:

Not applicable
Provide details if applicable:

17. Indicate if your company or parent company has ever been convicted of civil or criminal offenses concerning waste transporting, processing, or disposal.

No Yes (provide details on separate sheet)

18. Indicate if the applicant, any person mentioned in the application, or any person having a beneficial interest in the application has ever been denied an application to collect solid waste.

Not applicable

Provide details if applicable:

19. State general area served by applicant:

20. Indicate days of the week collections are made:

Mon Tue Wed Thur Fri Sat Sun

21. Daily average weight of Household solid waste collected: _____ Tons

22. Daily average weight of Municipal solid waste collected: _____ Tons

23. Daily average weight of Commercial/Industrial solid waste collected: _____ Tons

24. Indicate location(s) where solid waste is being or will be delivered: _____ Tons

TYPE OF WASTE	LOCATION DELIVERED

25. Statement of experience in solid waste collection, transportation, and/or disposal:

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED HEREIN AND ATTACHED HERETO IS TRUE AND CORRECT AND THAT I HAVE READ AND AM FAMILIAR WITH THE REQUIREMENTS OF THE REGULATIONS OF THE DELAWARE SOLID WASTE

PROPOSED REGULATIONS

AUTHORITY.

Date Signature of Applicant Title

STATE OF COUNTY OF

Before me appeared _____, who under oath certifies that the information provided in this application is true and correct.

Date Notary Public

EXHIBIT B

TRANSFER STATION MONTHLY SOLID WASTE REPORT

From: Reporting Period:
 To: Delaware Solid Waste Authority Date:

TYPE OF WASTE	TONS RECEIVED	TONS DISPOSED	DISPOSAL FACILITY <small>Tons Location</small>
SOLID WASTE DSWA REGULATIONS, SECTION 5			
a. Delaware			1.
			2.
			3.
			4.
b. Other			1.
			2.
			3.
			4.
TOTAL			
INDUSTRIAL PROCESS WASTE DSWA REGULATIONS, SECTION 3			
a. Delaware			1.
			2.
			3.
			4.
b. Other			1.
			2.

			3.
			4.
TOTAL			
GRAND TOTAL			

CERTIFICATION I hereby certify that the above information is true and correct, to the best of my knowledge, this day of _____, A.D. 19____.

Notary Public President

Differential Disposal Fee Program

The Delaware Solid Waste Authority (“Authority”), pursuant to the provisions of 7 Del. C. Ch. 64, hereby adopts the following program applicable to the fee for disposal of solid waste at authority facilities:

1. The base rate for disposal of solid waste (excluding special and industrial process solid waste) shall be \$58.50 per ton.
2. For those persons entering into a contract with the Authority to bring all of their solid waste (excluding special and industrial process solid waste) which has been collected in the State of Delaware to Authority facilities, the rebates set forth shall be paid by the Authority subject to the following:
 - a. The contract term shall be from the effective date to June 30, 2002, July 1, 2000 to June 30, 2002, or July 1, 2001 to June 30, 2002.
 - b. A rebate of \$10.00 shall be paid for each ton of solid waste (excluding special and industrial process solid waste) delivered to Authority facilities and for which the base rate disposal fee of \$58.50 per ton has been paid to the Authority. The rebate shall be paid for the following periods in which the solid waste (excluding special and industrial process solid waste) has been delivered:
 - (i) Effective date through June 30, 1999
 - (ii) July 1, 1999 through June 30, 2000
 - (iii) July 1, 2000 through June 30, 2001
 - (iv) July 2001 through June 30, 2002
 - c. The rebate for the periods set forth in Paragraph 2(b) above shall be paid within forty-five (45) days after full payment has been made to the Authority by the person entitled to the rebate, for the solid waste (excluding special and industrial process solid waste) delivered during the applicable period.
 - d. An additional rebate shall also be paid in the event that the solid waste (excluding special and industrial process solid waste) delivered to the authority facilities

exceeds 800,000 tons for any of the following periods:

- (i) July 1, 1999 to June 30, 2000
- (ii) July 1, 2000 to June 30, 2001
- (iii) July 1, 2001 to June 30, 2002

For each ton of solid waste (excluding special and industrial process solid waste) in excess of 800,000 tons paid for at the base rate and delivered to Authority facilities during each period identified immediately above, the Authority shall set aside the sum of \$8.50 per ton in a fund which shall be divided among those persons entering into contracts with the Authority and/or participating in this program. Each such person shall be entitled to a share of the fund based on the percentage of solid waste (excluding special and industrial process solid waste) which such person delivers to Authority facilities as a part of the total of all solid waste (excluding special and industrial process solid waste) delivered to authority facilities by (1) all persons under contract with the authority, and (2) all the municipalities, political subdivisions and governmental instrumentalities and entities. The additional rebate for the periods set forth in this Paragraph 2(d) shall be paid within forty-five (45) days after full payment has been made to the Authority by the persons entitled to the rebate.

e. In order to enter into the program, persons delivering solid waste (excluding special and industrial process solid waste) collected in the State of Delaware shall execute contracts with the Authority (I) prior to the effective date for the contract term from the effective date to June 30, 2002; (ii) on or before June 30, 2000 for the contract term July 1, 2000 to June 30, 2002; and (iii) on or before June 30, 2001 for the contract term July 1, 2001 to June 30, 2002.

3. Those persons not under contract with the authority shall be entitled to use the Authority facilities for disposal of solid waste collected in the State of Delaware, subject to payment of such rate or rates established by the Authority, and subject to compliance with the regulations and requirements of the authority and other applicable laws and regulations.

4. The contracts utilized to effectuate this program shall be uniform and shall be consistent with the operative provisions of the program as set forth herein, and shall contain such other terms and conditions deemed desirable and acceptable to the Authority. Anything to the contrary contained herein notwithstanding, municipalities, political subdivisions and governmental instrumentalities and entities which deliver to Authority facilities all their solid waste (excluding special and industrial process solid waste) collected in the State of Delaware shall be entitled to the full benefits of this program, without the need of entering into a contract with the authority. The contracts shall inure to the benefit of and be binding on the persons, including their successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, and all other entities existing or

newly formed, controlled directly or indirectly by such persons, through change in ownership or status by transfer of assets or otherwise, and which engage in the collection and/or transportation of solid waste (excluding special industrial process solid waste) generated in the State of Delaware.

5. This Program shall be available to all persons having active accounts with the Authority effective January 1, 1999 and who have delivered to authority facilities during the preceding twelve (12) month period a total of at least one hundred (100) tons of solid waste (excluding special and industrial process solid waste). For new accounts with the Authority after January 1, 1999, persons establishing such accounts shall be entitled to enter the program provided:

(a) the uniform contract referenced in Paragraph 4 herein is executed within sixty (60) days of the date the new account is established;

(b) the term of the contract extends to June 30, 2002;

(c) the new account is with a new person, and not a person having an account with the authority as of January 1, 1999; and

(d) the program benefits do not come into effect until sixty (60) days after the new account is established.

6. For purposes of this program the term "person" is defined to mean any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity. The term "person" shall also include successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, and all other entities existing or newly formed, controlled directly or indirectly by the person, through change in ownership or status by transfer of assets or otherwise.

7. This program shall become effective on the effective date established by the Authority and continue until June 30, 2002.

**Proposed Amendment to the Statewide Solid Waste
Management Plan**

INTRODUCTION

On August 31, 1998 the Delaware Solid Waste Authority ("DSWA") announced that it was initiating the process of updating its Statewide Solid Waste Management Plan ("Plan") which was last amended on May 24, 1994. As part of the process, written comments were solicited from the public by October 2, 1998, and it was indicated that public workshops would be held to discuss comments and develop a framework/outline for the initial draft of the Plan revision.

In addition to the comprehensive process of updating the Plan, the DSWA is undertaking this limited Plan

amendment in conjunction with regulation changes to afford the DSWA greater solid waste management program flexibility. The management flexibility is set forth hereafter and is intended to supplement the existing Plan. To the extent that there is any inconsistency, this proposed Plan amendment supercedes.

BACKGROUND

The DSWA has been directed by the Delaware General Assembly to carry out specific statutory responsibilities under 7 Delaware Code Chapter 64 (see appendix A of the Plan as adopted May 1994). Some of those responsibilities include:

1. That a statewide comprehensive program for management, storage, collection, transportation, utilization, processing and disposal of solid waste be established.
2. That a program for the maximum recovery and reuse of materials and energy resources derived from solid wastes be established.
3. That a program for protecting the land, air, surface, and groundwater resources of the State from depletion and degradation caused by improper disposal of solid waste be established.
4. That a statewide solid waste management plan be developed and implemented by DSWA.

In order to fulfill those responsibilities, the Delaware General Assembly provided DSWA with statutory capabilities. Some of those capabilities include:

1. Plan, design, construct, finance, manage, own, operate and maintain solid waste management facilities.
2. The receipt, transfer, storage, transportation, and handling of solid waste and development of support facilities as deemed necessary by DSWA.
3. Being granted all powers necessary to fulfill these purposes and to carry out assigned responsibilities.
4. Develop, implement and supervise a program requiring all persons who haul, convey or transport any solid waste to obtain a license from DSWA.
5. Charge reasonable fees for services.
6. Control, through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, and sanction any person who violates a regulation or a license condition.
7. Establishment of fees and charges for owners and occupants of real estate to support budgeting needs.
8. Utilize private industry to the maximum extent feasible to perform planning, design, management, collection, construction, operation, manufacturing, and marketing functions related to solid waste disposal and resources recovery.
9. Assist in the development of industrial enterprises based upon resources recovery, recycling, and reuse.

10. Purchase, manage, lease or rent real and personal property.

11. Do all things necessary for the performance of its duties, the fulfillment of its obligations, the conduct of its operations and the conduct of a comprehensive program for solid waste disposal and resources recovery, and for solid waste management services.

12. Make short and long range plans for the storage, collection, transportation or processing and disposal of solid wastes and recovered resources by the DSWA-owned facilities.

13. Contract with municipal, county and regional authorities, state agencies and persons to provide waste management service in accordance with this chapter and to plan, design, construct, manage, operate and maintain solid waste disposal and processing facilities on their behalf.

14. Utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the DSWA or the DSWA may determine that it is in the public interest to adopt other courses of action.

15. Enter into a contract or contracts with any municipality providing for or relating to the collection or treatment and disposal of garbage, solid wastes and refuse originating in the municipality and the cost and expense of such collection or treatment and disposal.

The DSWA has, under its statutory provisions implemented projects to meet the legislated mandate. Such projects include:

Delaware Reclamation Project
 Cherry Island Landfill Phases I – V
 Intermediate Processing Center
 Pigeon Point Transfer Station
 Pinetree Corners Transfer Station
 Sandtown Landfill Areas A – E
 Jones Crossroads Landfill Cells 1 – 3
 Recycle Delaware Centers (120 locations)
 Recyclables Marketing Program
 Collection Stations (5 locations)
 Household Hazardous Waste Collection
 Public Education Program

DSWA by contract has participated as a customer in private sector owned facilities such as Waste to Energy projects and recycling centers.

The DSWA has identified several future projects to continue to meet its legislative mandate. Such projects include:

Delaware Recycling Center / Materials Recovery Facility
 Central Solid Waste Management Center: Transfer Station / Materials Recovery Facility
 Southern Solid Waste Management Center: Transfer

Station / Materials Recovery Facility
Cherry Island Landfill Phase VI
Pine Tree Corners Transfers Station Expansion
Sandtown Landfill Areas F – H
Jones Crossroads Landfill Cells 4 –6
Statewide Site Development
Transportation Operations and Maintenance Centers

The DSWA's enabling legislation establishes a statewide solid waste management system which is unique. The scope of the DSWA's responsibilities are broad and the DSWA has implemented a program which not only meets state needs, but which is regional in nature. To support the DSWA's program, which has involved significant out of state disposal of solid waste, the DSWA has chosen among available management options, a statutorily authorized method of directing the flow of certain solid waste generated in the state to DSWA facilities. Although the DSWA's method of controlling waste flow is considered valid, the decision of the United States Supreme Court rendered in C. A. Carbone, Inc. v. Town of Clarkstown has caused all flow methods to be scrutinized.

Faced with constantly changing solid waste disposal objectives and alternatives, many of which could decrease the DSWA's participation in out of state disposal activities and involvement with out of state interests, the DSWA finds it necessary to have available the maximum flexibility possible to structure a program which best meets the needs of the citizens of the state and protects the public health and the environment. Accordingly the DSWA by this amendment to the Plan identifies the alternatives available to the DSWA for replacing the current method of flow control.

SOLID WASTE MANAGEMENT OPTIONS

In addition to the alternatives set forth in Chapter IV of the Plan, the DSWA shall have available the following solid waste management options:

1. The provision by contract with solid waste haulers for solid waste collection and transportation services.
2. The provision of recycling services.
3. Use of differential pricing for solid waste disposal fees.
4. Establishment of fees and charges for owners and occupants of real estate to satisfy budgetary needs.
5. Construction or acquisition in whole or in part of facilities to satisfy solid waste collection, transportation, transfer, recycling or disposal needs.

The DSWA, in reviewing the management system options available for establishing user fees, considers differential pricing for solid waste disposal to be the preferable alternative of the options set forth above. The DSWA in implementing management options may utilize

DSWA staff or contract for services. The DSWA may enter into short or long-term agreements under such terms and conditions considered desirable by the DSWA. The DSWA may set and modify the fees it charges in implementing any of the management options. In selecting and implementing options, alternatives and ancillary program features, including the establishment and modification of fees, the DSWA shall act through Resolution of its Board of Directors.

STATE FIRE PREVENTION COMMISSION

STATE FIRE MARSHALLS OFFICE

Statutory Authority: 16 Delaware Code,
Section 6603 (16 Del.C. 6603)

NOTICE OF PUBLIC HEARING

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. 101 on Tuesday, February 16, 1999, at 2:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Part V, Chapter 5 Standard for the Marking, Identification, and Accessibility Of Fire Lanes, Exits, Fire Hydrants, Sprinkler, and Standpipe Connections.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or the Administrative Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located in the First Federal Plaza Building, 704 King Street, Suite 200, Wilmington, Delaware, 19801, and Road 321, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on February 16, 1999, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

Part V
Chapter 5

Standard For The Marking, Identification, And Accessibility Of Fire Lanes, Exits, Fire Hydrants, Sprinkler, And Standpipe

5-1 General.

5-1.1 Scope.

5-1.1.1 This Regulation establishes the minimum requirements for the design criteria and marking of fire lanes so as to provide access by emergency services to buildings and structures, fire hydrants, standpipes and sprinkler connections.

5-1.1.2 This Regulation also establishes the minimum requirements for the design criteria and marking of free and unobstructed areas or zones around fire hydrants; standpipe and sprinkler connections; building exits for access by emergency services and to prohibit the blocking of such areas.

5-1.2 Purpose.

5-1.2.1 The purpose of this Regulation is to provide for requirements that ensure a reasonable degree of operational access by emergency services to buildings and structures for those fire protection and life safety features routinely utilized by the emergency services.

5-1.3 Application.

5-1.3.1 For the purpose of meeting 5-1.1.1, this regulation shall apply to:

(a) All buildings >10,000 square feet in gross floor area

(b) All buildings:

(1) 3 or more stories in height OR

(2) Over 35 feet in height

(c) All buildings or operations whose primary occupancy is classified as "High Hazard Occupancy"

5-1.3.2 For the purpose of meeting 5-1.1.2, this regulation shall apply to all fire hydrants and fire department connections which are part of a specific buildings fire protection features.

5-1.3.3 This Regulation shall apply to all buildings, additions or those buildings undergoing a change in occupancy as specified in Part I, Chapter 1 of these Regulations.

5-1.3.4 This Regulation does not apply to:

(a) One- and two-family dwellings as defined in Part I, Chapter 1 of these Regulations.

(b) Residential units occupied as one- and two-family units when constructed in a "townhouse" configuration.

5-1.3.5* Where, in the opinion of the State Fire Marshal, an occupancy's fire protection features are such that fire lanes do not contribute to the overall level of life safety and/or property conservation, the State Fire Marshal may modify the requirements of this Chapter. Such occupancies shall be identified on a case by case basis and listed by the State Fire Marshal.

A-5-1.3.5 The intent of this section is to allow the State Fire Marshal, on a case by case basis, to modify the fire lane requirements (including the use of forestry lanes) based on the occupancy's site configuration, building size and construction, occupancy classification, and internal features of fire protection, such as fire alarm signaling and fire suppression systems.

5-1.4 Definitions.

5-1.4.1 The definitions as found in this section shall be in addition to the definitions found in other sections of these Regulations and shall be applicable to Part V, Chapter 5.

Edge of Roadway. Shall be defined as:

1. Alongside of a curb, or

2. The outer edge of a roadway, or

3. The outer edge of the designated fire lane

Yellow Color. The specific color yellow shall be uniformly accepted yellow as utilized by State of Delaware Department of Transportation (DelDOT).

High Hazard Occupancy. Any building or area classified as high hazard within the Life Safety Code, NFPA 101, or as extra hazard within the Standard for the Installation of Sprinkler Systems, NFPA 13.

5-2 Fundamental Requirements.

5-2.1 Every building, structure or property shall be provided with sufficient emergency access to and from both primary and secondary entrances, exits, and necessary equipment such as fire hydrants, fire department connections, drafting pads, and like items.

5-2.2 Every fire lane, fire hydrant, fire department connection and other like items shall be clearly marked in accordance with applicable sections of this Chapter.

5-2.3 Every fire lane, fire hydrant, fire department connection and other like items shall be continuously maintained free of all obstructions or impediments allowing full and instant use in case of an emergency.

5-2.4 Every fire lane, fire hydrant, fire department connection, and other like items shall be maintained by the property owner to such a degree so as to keep said equipment properly marked, accessible, and visible at all times.

5-2.5 Where, in the absence of specific instructions, signs or other notification, the color yellow shall denote "NO PARKING."

5-2.6 Where required by this regulation, fire lanes, fire hydrants, fire department connections and other like items shall use demarcation lines to define specific areas.

5-2.7 All demarcation lines shall be a minimum of four inches (4") in width.

5-2.8 All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

5-2.9 Enforcement action to require the appropriate design and marking of fire lanes and other like items shall be as prescribed in this Regulation and 16 Del. C. §6611.

5-2.10 Enforcement action regarding stopping, standing or parking a vehicle in a fire lane shall be as prescribed in this regulation and 21 Del. C. §7001.

5-2.11 Enforcement action regarding stopping, standing or parking a vehicle within 15 feet of a fire hydrant shall be as prescribed in this regulation and 21 Del. C. 4179

5-2.12 Four copies of an independent and specific record type plan, shall be submitted to the State Fire Marshal's Office providing specific identification and marking details of access roadways, fire lanes, fire department connections and fire hydrants.

5-3 Access Roadways.

5-3.1 Where emergency services have to utilize access roadways between public streets or roads to reach designated fire lanes, etc. such access roadways shall be constructed to meet the minimum engineering specifications and/or requirements to support emergency apparatus.

5-3.2 Access roadways with no parking on one or both sides shall be marked as follows:

(1) Curbs painted yellow or a yellow line pursuant to

Figure 1 of these Regulations and

(2) Signs posted along the curb, building line, or side of the roadway placed at each end of the access roadway and spaced at 150 foot intervals maximum; all signs shall be located no less than six feet above the pavement and no higher than eight feet

5-3.3 Access roadways with parking on both sides shall not require marking

5-4 Design Of Fire Lanes.

5-4.1 Design and location of fire lanes around buildings, structures or properties are dependent on many considerations, such as occupancy, building height, construction, property grades, etc. As a result, only those persons having a good working knowledge of fire department operations and equipment limitations should determine fire lane locations. The following criteria shall be followed to effect a proposed design for submittal to the State Fire Marshal or his duly authorized representative for review and approval.

5-4.2 Primary fire lanes shall be a minimum 24 feet in width.

5-4.3 Secondary fire lanes shall be a minimum 16 feet in width.

5-4.4* The minimum width of primary and/or secondary fire lanes may be reduced when, in the opinion of the State Fire Marshal, the reduced width will not impact on the accessibility of fire department emergency vehicles.

A-5.4.4 The intent of this section is to allow the State Fire Marshall to accept a primary and/or secondary fire lane width less than what is required by these Regulations.

5-4.5 Fire lanes shall be constructed to meet the minimum engineering specifications and/or requirements to support emergency apparatus.

5-4.6 "Speed Bumps" or any other like device used to reduce vehicle speed will be installed pursuant to the State of Delaware Department of Transportation specifications.

5-4.7 No parking shall be permitted between a primary fire lane and the building. One row of parking shall be permitted between a secondary fire lane and the building.

5-4.8 Overhangs, canopies, balconies, or any other building feature shall not project over any primary or secondary fire lane.

5-5 Location Of Fire Lanes.

5-5.1 Primary fire lanes shall be required to run along the "front of the building" as determined by the primary entrance/exit, windows, balconies, etc. In cases where there is more than one primary entrance/exit, each shall be served by a primary fire lane even if this exceeds the accessibility percentage as required in Table 5-7.

5-5.2 Secondary fire lanes are acceptable to achieve the remaining required perimeter accessibility percentage and to provide access to fire department connections and secondary exits.

5-5.3 The closest edge of both primary and secondary fire lanes shall not be located further than 50 feet from an exterior wall if one or two stories; 40 feet if three or four stories and 30 feet if over four stories in height.

5-6 Marking Of Fire Lanes.**5-6.1 General.**

5-6.1.1 All fire lanes shall be marked in accordance with figures 1, 3 and 4 of these regulations

5-6.1.2 Fire lanes with no parking between the fire lane and the building shall be marked as follows:

(1) Curbs painted yellow or 4 inch yellow demarcation lines on both the inner and outer edges as illustrated in Figures 1 and 3 of these regulations and

(2) Signs meeting the design of figure 9, posted along the curb, building line, or edge of the roadway placed at each end of the fire lane and spaced at 150 foot intervals maximum; all signs shall be located no less than six feet above the pavement and no higher than eight feet

5-6.1.3 Fire lanes with parking between the fire lane and the building shall not require any form of marking as illustrated in Figures 2 and 4 of these regulations

5-7 Perimeter Accessibility.

5-7.1 Perimeter accessibility is calculated based on building occupancy, height, and internal fire protection features.

5-7.2 Table 5-7 shall be used in determining perimeter accessibility in new buildings.

5-7.3 Table 5-7 shall be used for existing buildings also, except that only 50 percent of the determined perimeter accessibility percentage will be required.

5-7.4 For this regulations purpose, building height shall be measured from the lowest level of fire department vehicle access to the floor of the highest occupiable story.

5-7.5 Perimeter accessibility may be reduced by up to 50 percent when the building is completely protected by an automatic sprinkler system installed pursuant to the specifications and standards of the Standard for the Installation of Sprinkler Systems, NFPA 13, as adopted and/or modified by these Regulations.

Exception: Perimeter accessibility shall not be reduced for Health-Care or Detention and Correctional occupancies.

5-8 Forestry Lanes.

5-8.1 Forestry lanes may only be utilized pursuant to §5-1.3.5 of this Regulation.

5-8.2 Forestry lanes shall be a minimum of 16 feet in width.

5-8.3 Forestry lanes shall be constructed of no less than six inches (6") of crusher run on a well compacted base of select material with a two inch (2") maximum cover of top soil and seed

5-8.4 All forestry lanes shall be marked by use of no smaller than three foot (3') and no longer than five foot (5') trees or shrubs spaced 20 feet on center. Trees and shrubs of the same size and type shall be placed at the end of the forestry lane to denote its end

5-8.5 All forestry lanes shall be provided with adequate curb cuts and each side of the curb cuts shall be provided with signs the same type of which are specified in §5-6.1.2 of this chapter

5-9 Marking And Identification Of Exits.

5-9.1 This regulation may be applied to exits which are obstructed by the parking of vehicles or other obstructions.

5-9.2 Exits shall have demarcation lines to define specific areas.

5-9.3 Demarcation lines shall be a minimum of four inches (4") in width.

5-9.4 Demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

5-9.5 Demarcation lines on secondary exits shall be measured from the center line of the exit way and shall

extend for a distance of six feet (6') on either side to the public way (fire lane).

5-9.6 Demarcation lines need not be located on sidewalk surfaces or other pedestrian surfaces not subject to vehicular traffic but shall extend from the end of the sidewalk surface to the fire lane.

5-9.7 No objects, stands, displays, or other impediments shall be located within the demarcation area.

5-9.8 Four inch steel bollards filled with concrete shall be installed at the corners of the exit demarcation area.

5-10 Marking And Identification Of Fire Hydrant Location.

5-10.1 All fire hydrants shall be marked in accordance with Figures 5, 6 and/or 7.

5-10.2 When fire hydrants are located along the curb line, the area between the fire hydrant and the fire lane shall be stenciled with the words "NO PARKING" which shall extend to a distance of 15 feet on either side to be measured from the center line of the fire hydrant (See Figure 5).

5-10.3 Where fire hydrants are located on a curb island extension in such a manner that the hydrant is directly accessible to the access or fire lane, it will only be necessary to paint the curb island extension for the distance it traverses the access lane. (See Figure 7)

5-10.4 The distance between a fire hydrant and the nearest demarcation line of a fire lane shall not be greater than seven feet (7') unless an alternate distance is approved by the State Fire Marshal.

5-10.5 The steamer connection of all fire hydrants shall be so positioned so as to be facing the fire lane.

5-10.6 Where fire hydrants are located in parking lots or other areas susceptible to blockage by parked vehicles they shall be treated as follows (See Figure 6):

(a) Fire hydrants shall be protected in all directions for a distance of seven feet (7') with barriers or curbing

(b) A fire lane or vehicle access roadway, a minimum of 16 feet in width, shall run through the parking area and adjacent to the demarcation area of the fire hydrant.

5-10.7 All fire hydrants shall have demarcation lines to define specific areas.

5-10.8 All demarcation lines shall be a minimum of four inches (4") in width.

5-10.9 All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

5-10.10 Four inch steel bollards filled with concrete shall be installed at the corners of the fire hydrant demarcation area

5-11 Marking And Identification Of Standpipes And Sprinkler Connections.

5-11.1 In addition to the requirements outlined in Part III, Chapter 1, §1-1.4.1 of these Regulations, all standpipe and sprinkler connections shall also be marked in accordance with Figure 8.

5-11.2 Demarcation lines shall be measured from the center line of connection and extend for a distance of four feet (4') on either side.

5-11.3 Demarcation lines need not be located on sidewalk surfaces but should extend from the end of the sidewalk surface to the fire lane.

5-11.4 No objects, stands, displays, or other impediments shall be located within the demarcation area.

5-11.5 All standpipe and sprinkler connections and other such like items shall have demarcation lines to define specific areas.

5-11.6 All demarcation lines shall be a minimum of four inches (4") in width.

5-11.7 All demarcation lines shall be yellow in color and only a vivid and durable paint shall be used which is suitable for road surfaces.

5-11.8 Four inch steel bollards filled with concrete shall be installed at the corners of the standpipe and sprinkler

Table 5-7
Perimeter Accessibility

Type of Occupancy	Number of Stories		
	1-2 (Up to 25')	3-4 (26-50')	Over 4 (Over 50')
Place of Assembly			
Class A	100%	100%	100%
Class B	75%	100%	100%
Class C	50%	100%	100%
Educational			
All Schools	100%	100%	100%

PROPOSED REGULATIONS

Day Care Facilities	75%	100%	100%
Health Care & Penal	100%	100%	100%
Business	50%	100%	100%
Mercantile			
Class A	100%	100%	100%
Class B	75%	100%	100%
Class C	50%	100%	100%
Residential	50%	70%	100%

NOTE 4: Where, in the opinion of the State Fire Marshal, an occupancy's fire protection features are such that fire lanes do not contribute to the overall level of life safety and/or property conservation, the State Fire Marshal may modify the requirements of this Chapter. Such occupancies shall be identified on a case by case basis and listed by the State Fire Marshal.

NOTE 1: Industrial, Storage, special hazards, and any occupancy not listed in Table 5-7 will be reviewed on an individual basis with the nature and degree of the hazard to be considered.

NOTE 2: See §5-1.3.3 for buildings that are not required to comply with this Table.

NOTE 3: Perimeter accessibility may be reduced by up to 50 percent when the building is completely protected by an automatic sprinkler system installed pursuant to the specifications and standards of the Standard for the Installation of Sprinkler Systems, NFPA 13, as adopted and/or modified by these regulations
Exception: Perimeter accessibility shall not be reduced for Health-Care or Detention and Correction occupancies

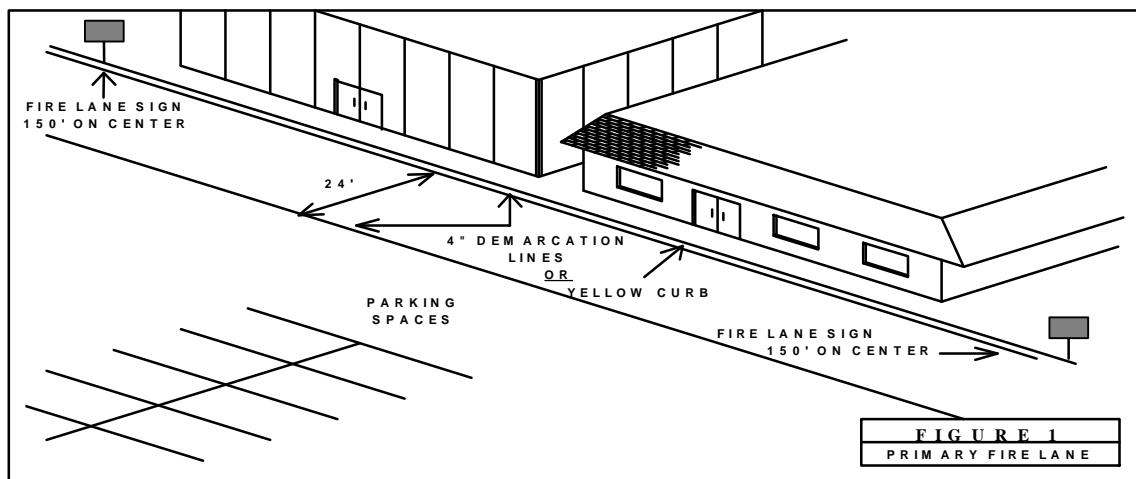


Figure Two
RESERVED

Figure Three
Marking of Secondary Fire Lane
With a Sidewalk

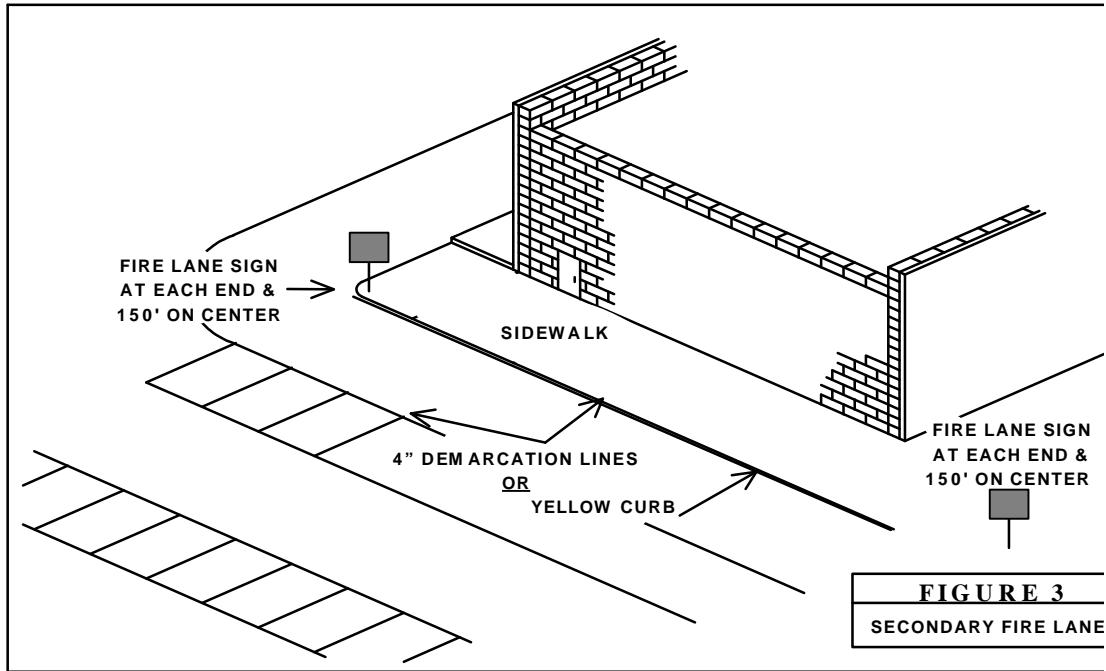


Figure Four
Marking of Secondary Fire Lane
Without a Sidewalk

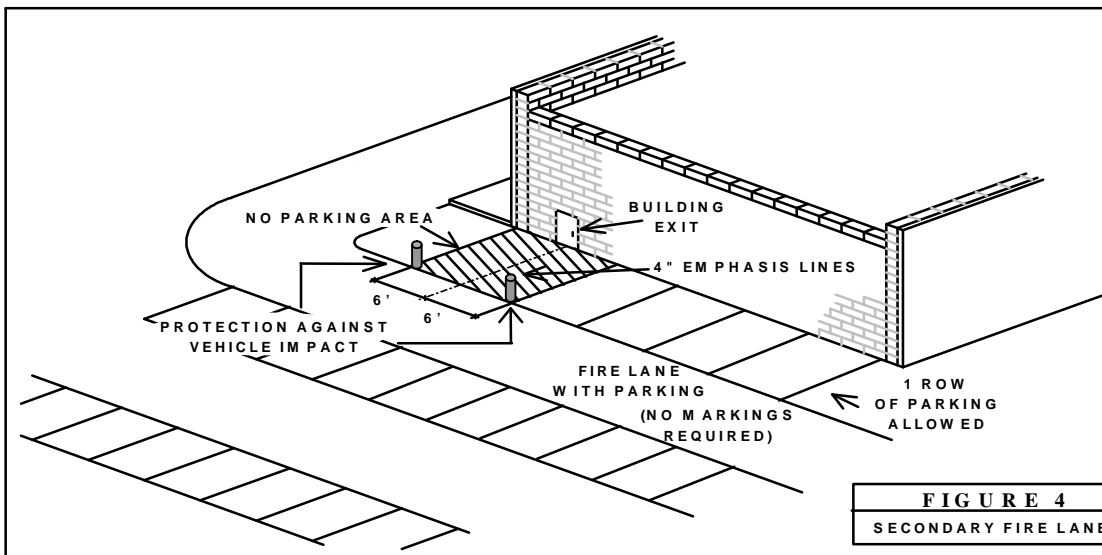


Figure Five
Marking of Fire Hydrant Along A Curb Line

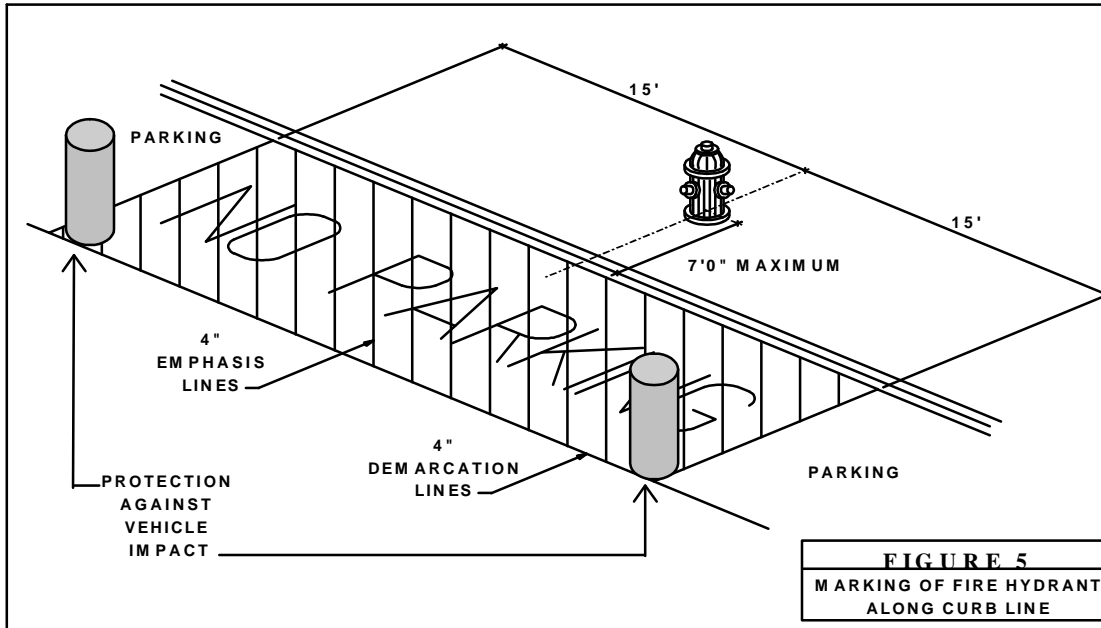


Figure Six
Marking and Protection of Fire Hydrant in Vehicle Parking Area

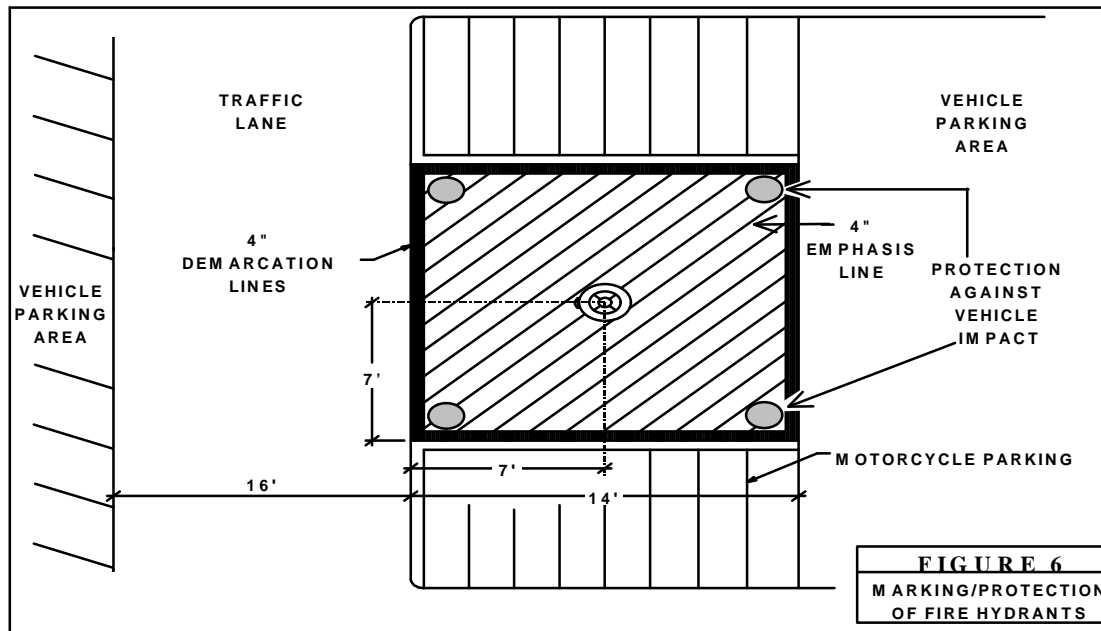


Figure Seven
Marking of Fire Hydrant on a Curb Island Extension

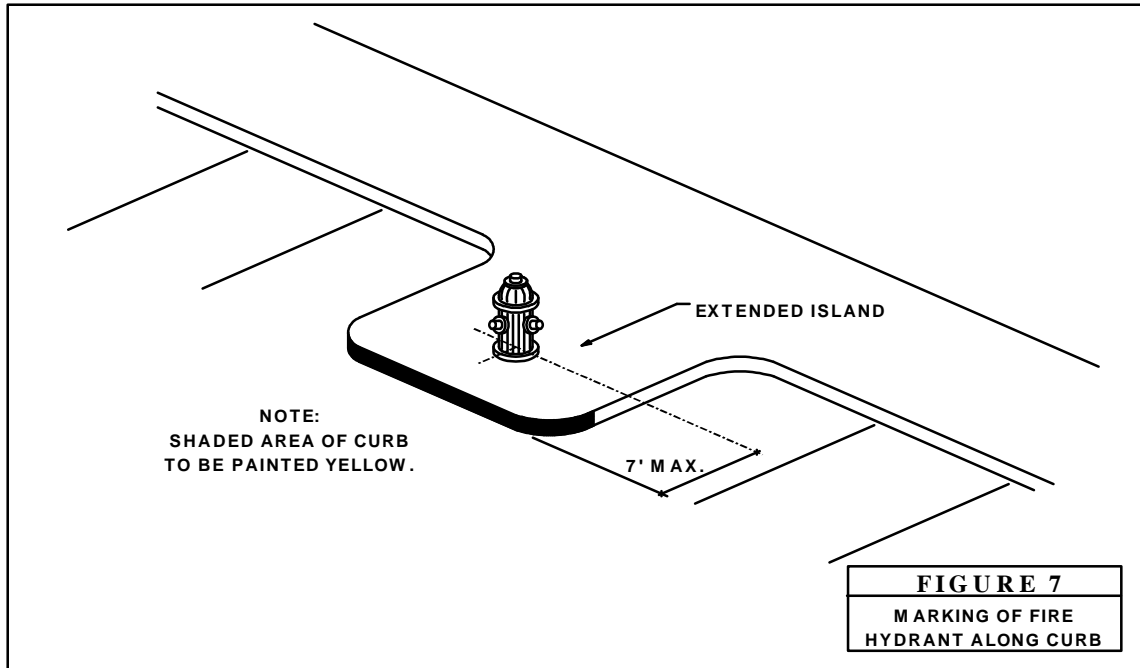
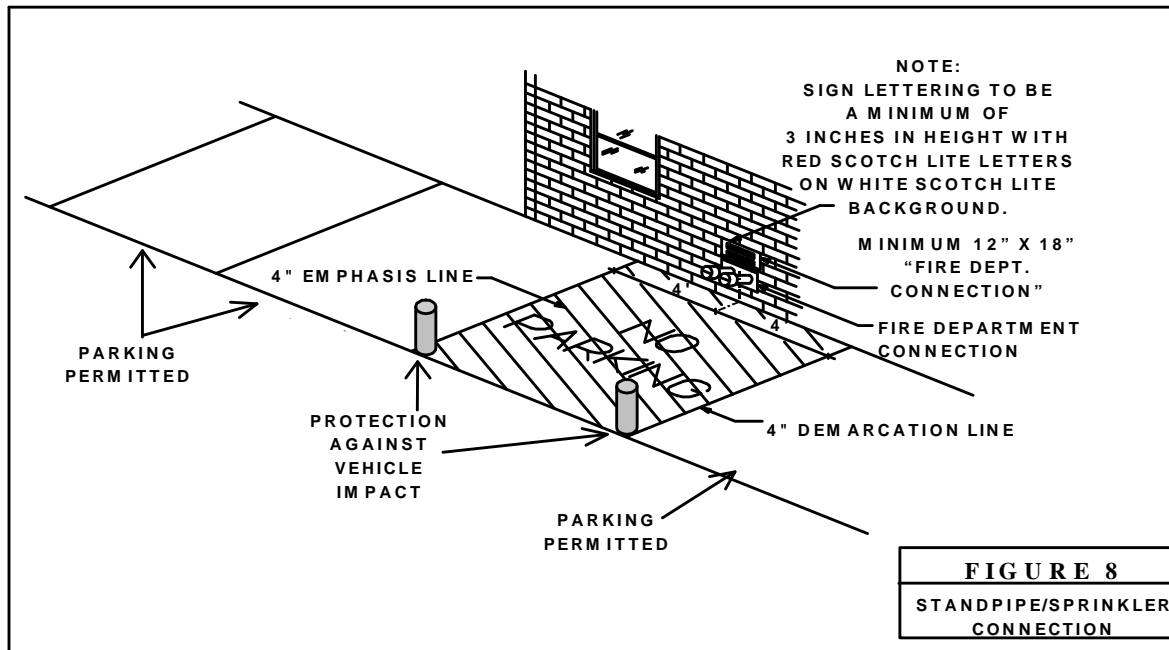


Figure Eight
Marking of Standpipe and Sprinkler Connections



**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF OCCUPATIONAL
THERAPY**

Statutory Authority: 24 Delaware Code,
Section 2007(a)(1) (24 **Del.C.** 2007(a)(1))

Notice of Public Hearing

Please Take Notice, pursuant to 29 Del.C., Chapter 101 and 24 Del.C., §2007(a)(1), the Delaware Board of Occupational Therapy has developed and proposes to adopt comprehensive Rules and Regulations. The regulations will describe the Board's organization, operations and rules of procedure, the process and requirements for licensure and certain standards of conduct applicable to the practice of occupational therapy.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, March 17, 1999 at 4:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Written comments should be submitted to the Board in care of Mary Paskey at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Mary Paskey at the above address or by calling (302) 739-4522, ext. 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

FINAL DRAFT

Delaware State Board of Occupational Therapy
Proposed Rules And Regulations
Draft Effective 01/06/99

Table of Contents

RULE 1:	Definitions/Requirements for Supervision of OTa/L
RULE 2:	Licensure Procedure
RULE 3:	Temporary Licensure/Examination Eligible OT
RULE 4:	Temporary Licensure/Examination Eligible Ota
RULE 5:	Continuing Education

Rule 1: Supervision/consultation Requirements for Occupational Therapy Assistants:

(A) "Occupational therapy assistant" shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. Title 24, Delaware Code, §2002(4). (emphasis added)

"Under the supervision of an occupational therapist" means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, "Under the supervision of an occupational therapist," as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

1. Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
2. In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.
3. Case management;
4. Determining program termination;
5. Providing information, instruction and assistance as needed;
6. Observing the occupational therapy assistant periodically; and
7. Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant's performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

(B) Supervision for Occupational Therapy Assistants is defined as follows:

1. Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

2. Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.

3. General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.

(C) Minimum supervision requirements:

1. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.

2. Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.

3. An occupational therapist can supervise no more than three (3) occupational therapy assistants (two (2) if in separate locations).

4. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.

5. The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.

This plan shall be reviewed at least every six months or more frequently as demands of service changes.

6. A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1 of these rules and regulations.

RULE 2: LICENSURE PROCEDURES:

(A) To apply for an initial license, an applicant shall submit to the Board:

(1) A completed notarized application on the form approved by the Board;

(2) Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

(3) Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

(4) Fee payable to the State of Delaware.

(B) To apply for a reciprocal license, in addition to the requirements listed in Title 24, Delaware Code, §2011, an applicant shall submit the following to the Board:

(1) A completed notarized application on the form approved by the Board;

(2) Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

(3) Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);

(4) Fee payable to the State of Delaware.

(C) To apply for renewal, an applicant shall submit:

(1) A completed renewal application on the form approved by the Board;

(2) Evidence of meeting continuing education requirements as designated by the Board in Rule 5;

(3) Renewal fee payable to the State of Delaware.

(D) To apply for inactive status:

A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

(E) To apply for reactivation of an inactive license, a licensee shall submit:

(1) A letter requesting reactivation;

(2) A completed application for renewal

(3) Proof of continuing education attained within the past two years (20 contact hours) The twenty (20) hours must be in accordance with Rule 5 of these rules and regulations;

(4) Fee payable to the State of Delaware.

(F) To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):

(1) A completed application for renewal;

(2) Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5 of these rules and regulations;

(3) Licensure and late fee payable to the State of Delaware.

**RULE 3: TEMPORARY LICENSURE/EXAMINATION
ELIGIBLE OT:**

(A) To apply for a temporary license, an applicant shall submit to the Board:

- (1) A completed, notarized application on the form approved by the Board;
- (2) Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;
- (3) A letter indicating the date on which the applicant proposes to take the NBCOT examination;
- (4) A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in paragraph (c);
- (5) Fee payable to the State of Delaware.

(B) Following the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores, if the Board has not directly received the results of the examination. If the temporary licensee has not successfully passed the examination the temporary license will be surrendered to the Board immediately upon notification of exam results.

(C) Supervision of the exam-eligible occupational therapist with a temporary license shall be defined as follows:

- (1) The supervising occupational therapist must hold a current license to practice in the state of Delaware;
- (2) Must have completed a minimum of one year of practice from the date of their permanent licensure status;
- (3) Supervision must consist of daily face to face contact between the supervisor and the temporary licensee;
- (4) The supervising occupational therapist shall at no time supervise more than four (4) temporarily licensed occupational therapists. In the event that the temporary licensees should be working at separate sites, the supervising therapist shall supervise no more than two (2) temporarily-licensed therapists. A supervising therapist can assume responsibility for no more than five (5) including temporarily licensed OTs and OTAs and licensed OTAs.

**RULE 4: TEMPORARY LICENSURE/EXAMINATION
ELIGIBLE OTA:**

(A) To apply for a temporary license, an applicant shall submit to the Board:

- (1) A completed, notarized, application on the form provided by the Board;
- (2) Official transcript and proof of successful completion of field work submitted by the school directly to the Board Office;

(3) A letter indicating the date on which the applicant proposes to take the NBCOT examination;

(4) A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in paragraph (c);

(5) Fee payable to the State of Delaware.

(B) Following the examination, if the Board has not directly received the results of the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores,. If the temporary licensee has not successfully passed the examination, the temporary license will be surrendered to the Board immediately upon notification of exam results.

(C) Supervision for the examination-eligible occupational therapy assistant with a temporary license shall be defined as follows:

- (1) The supervising occupational therapist must hold a current license to practice in the state of Delaware;
- (2) Must have completed a minimum of one year of practice from the date of their permanent licensure status;
- (3) Direct Supervision as defined in Rule 1 shall be required of all temporarily licensed occupational therapy assistants;
- (4) The supervising occupational therapist shall at no time supervise more than three (3) temporarily licensed occupational therapy assistants. A supervising therapist can assume responsibility for no more than five (5) including temporarily licensed OT, OTAs and licensed OTAs).

RULE 5: CONTINUING EDUCATION:**(A) Continuing Education Units (CEUs):**

Contact hours shall be prorated for new licensees in accordance with the following schedule:

- **21 months up to and including 24 months remaining in the licensing cycle requires 20 hours
- **16 months up to and including 20 months remaining in the licensing cycle requires 15 hours
- **11 months up to and including 15 months remaining in the licensing cycle requires 10 hours
- **10 months or less remaining in the licensing cycle..... exempt

(B) Definition of Acceptable Continuing Education Credits:

Credits must be earned in two (2) or more of the seven (7) categories for continuing education beginning on page 8.

(C) Continuing Education Content:

Activities must be in a field of health and social services related to occupational therapy. Approval will be at the

discretion of the Board. CEUs earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

(D) Definition of Contact Hours:

(1) Academic course work, correspondence courses, or seminar/workshop shall be equivalent to one (1) contact hour.

(2) One (1) academic semester hour shall be equal to fifteen (15) contact hours.

(3) One (1) academic quarter hour shall be equal to ten (10) contact hours.

(4) The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

(E) Categories for Continuing Education:

(1) COURSES: The maximum number of hours for course work which shall not exceed nineteen (19) hours, (1.9 CEUs), are hour-for-hour program content only, courses from extension courses, refresher courses, workshops, seminars, lectures, conferences, in-services, as long as they enhance occupational therapy services. Excluded are any job related duties in the workplace such as fire safety, OSHA or CPR.

(2) PROFESSIONAL MEETINGS & ACTIVITIES: The maximum number of credit hours shall not exceed ten (10) hours, (1.0 CEUs). Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

(3) PUBLICATIONS: The maximum number of credit hours shall not exceed fifteen (15) hours, (1.5 CEUs). These include writing chapters, books, abstracts, book reviews accepted for publication and media/video for professional development in any venue. Prior approval by the Board for individual credit is mandatory for the licensee. Publications submitted at the close of the licensure period, which have not been previously reviewed and approved by the Board, will not be considered for continuing education credits.

(4) PRESENTATIONS: The maximum number of credit hours shall not exceed fifteen (15) hours, (1.5 CEUs). This includes workshops and community service organizations presentations that the licensee presents. Credit will not be given for the presentation of information that the

licensee has already been given credit for under another category.

(5) RESEARCH/GRANTS: May be used one time for CEUs per study/topic regardless of length of project, not to exceed ten (10) hours, (1.0 CEUs). CEUs accumulated under this category may not be used under the publication category. Licensee must submit documentation of authorship or letters from authorizing entity to receive continuing education credit. Documentation must be presented for prior Board approval to determine the number of CEU hours.

(6) SPECIALTY CERTIFICATION: Approval of credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Certified Pediatric Occupational Therapist (BCP).

(7) HOME STUDY COURSES: The maximum number of credit hours shall not exceed ten (10) hours, (1.0 CEUs). These include distance learning and correspondence courses. Documentation must be presented for prior Board approval for home study courses.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE REAL ESTATE COMMISSION**
Statutory Authority: 24 Delaware Code,
Section 2905 (24 Del. C. Section 2905)

Notice of Public Hearing

The Delaware Real Estate Commission, in accordance with 24 Delaware Code, Section 2905(a)(1) and 29 Delaware Code, Section 10115 of the Administrative Procedures Act, hereby give notice that it shall hold a public hearing on March 18, 1999 at 1:30 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding revisions of the rules and regulations: Rule I.C.I (Responsibility). Add sentence specifying responsibility of broker to see that all agents affiliated with his/her office are currently licensed; Rule II.A.2. Non-substantive changes updating the title of the education guidelines. Rule XII. (Inducements). Add subsection B permitting a broker or salesperson who must be a resident or non-resident licensee to give a rebate/discount/ any other thing of value to a purchaser or seller and C which requires the licensee to disclose to his or her principal any rebate or discount made to buyer.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed changes may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

Delaware Real Estate Commission
Rules And Regulations

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***PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.**

~~For Revision~~ Effective May 13 14, 1999

Delaware Real Estate Commission Rules And Regulations

I. Introduction

A. Authority

1. Pursuant to 24 Del. C. Section 2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

2. The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

3. The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 Del. C. Chapter 29.

B. Applicability

The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

C. Responsibility

1. It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$1,000.00 per agent.

2. Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

3. The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

II. REQUIREMENTS FOR OBTAINING A SALESPERSON'S LICENSE

The Commission shall consider any applicant who has successfully completed the following:

A. Course

1. The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2. Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate ~~Continuing~~ Education Requirements". The Commission reserves the right to grant exception to this limitation.

B. Examination

1. Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2. An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

C. Ability to conduct business

1. The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2. The minimum age at which a salesperson's license can be issued is eighteen (18).

D. Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

1. Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del. C. Section 8807(d).

III. REQUIREMENTS FOR OBTAINING A REAL ESTATE BROKER'S LICENSE

The Commission shall consider the application of any person for a broker's license upon completion of the following:

A. Course

1. The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

2. Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

B. Experience

1. A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license.

2. The applicant shall submit to the Commission a

list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3. The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

C. Examination

Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

D. Ability to conduct business

1. The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

2. The minimum age at which a person can be issued a broker's license is twenty-three (23).

E. Credit Report

Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

F. Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

1. Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del. C. Sec. 8807(d).

IV. RECIPROCAL LICENSES

A. Requirements

1. A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident broker's license under 24 Del. C. Sec. 2909(a).

2. A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a

broker's license issued by the Commission.

3. The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules II.B. or III.C. provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

V. ESCROW ACCOUNTS

A. All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

B. All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker.

C. A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

D. A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

E. An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

F. The Commission may summarily suspend the license of any broker who fails to comply with Paragraph D, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

G. Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

VI. TRANSFER OF BROKER OR SALESPERSON

A. All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were

formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

B. The Commission reserves the right to waive this requirement upon a determination of good cause.

C. All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

VII. BUSINESS TRANSACTIONS AND PRACTICES

A. Written Listing Agreements

Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

B. Copy of agreements

Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

C. Advertising

1. Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

2. Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

3. Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

4. All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

D. Separate Office

1. Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

2. Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

E. Compensation

1. Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

2. When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

F. Duty to Cooperate

Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

VIII. RENEWAL OF LICENSES

A. Renewal Required by Expiration Date on License

In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

B. Delinquency Fee

1. If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

2. Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

C. Reinstatement of License

1. A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the

delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

2. No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

IX. AVAILABILITY OF RULES AND REGULATIONS

A. Fee Charge for Primers

Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

X. DISCLOSURE

A. A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to ALL persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

B. Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will BUY your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

C. A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be

made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

The written confirmation of disclosure in the contract shall be worded as follows:

With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

D. If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

XI. HEARINGS

A. When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

B. There shall be a maximum of one (1) postponement

for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

XII. INDUCEMENTS

A. Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to NON-LICENSED PERSONS, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

B. This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

C. A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

XIII. NECESSITY OF LICENSE

A. For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

B. For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

XIV. OUT OF STATE LAND SALES APPLICATIONS

A. All applications for registration of an out of state land sale must include the following:

1. A completed license application on the form provided by the Commission.
2. A \$100 filing fee made payable to the State of Delaware.
3. A valid Business License issued by the State of Delaware, Division of Revenue.
4. A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of

State and a letter identifying the applicant's registered agent in the State of Delaware.

5. The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

6. A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

7. Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

B. Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 2 through 4 of Section A above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

C. If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE GAMING CONTROL BOARD
Statutory Authority: 28 Delaware Code,
Section 1122 (28 Del.C. 1122)**

The Delaware Gaming Control Board proposed amendments to the Bingo Regulations and charitable Gambling Regulations. The Board proposes these regulations pursuant to 28 Del. C. §1122 and 29 Del. C. §10111. A copy of the proposed regulations are attached to this letter.

The public may obtain copies of the existing regulations and proposed regulations from the Board's office, Division of Professional Regulations, c/o Lynn Houska, Cannon Building, Suite #203, 861 Silver Lake Boulevard, Dover, DE 19904, phone (302) 739-4522. The Board will accept written comments from February 1, 1999, until March 2, 1999. A public hearing will be held at the Board's monthly meeting on March 3, 1999, at 1:00 p.m. at the Common

Building, second floor conference room.

The Board proposes to amend Charitable Gambling Regulation 3.12 to provide for filing of an after occasion report within fifteen (15) days of the last day of the function consistent with 28 Del. C. §1140. The Board proposes to amend Bingo Regulation 1.04(7) to further define the cookie jar bingo games by providing: 1) that no licensee can start a third cookie jar bingo jackpot without first giving away their first cookie jar bingo jackpot; and, 2) if a licensee has not given away a first cookie jar jackpot as required, then the licensee must hold a separate bingo coverall game as the last game to award the jackpot.

**Regulations Governing Charitable Gambling
Other than Raffles**

3.12: Reports After the Function.

Within fifteen (15) days of the last day of the Function, the member-in-charge shall submit a report to the Board stating the amount of Gross Receipts, the Net Proceeds and the list of expenses incurred. This report must indicate the specific charitable purposes for which the proceeds will be used.

Regulations Governing Bingo

1.04(7): Conduct of Bingo.

No prizes greater in an amount or value than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of \$500 and then accrues a second cookie jar bingo

pot of \$500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the \$500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

The Secretary seeks the consent of the State Board of Education to repeal the regulation School Calendar and Required Days and Hours of Instruction, I.D.2., page A-7 in the Handbook for K-12 Education. The repeal is necessary because the regulation is simply a repeat of Del. C., Section 1049, and does not need to be in regulation since it is already in the Del. C.

School Calendar And Required Days And Hours of Instruction

From Handbook For K-12 Education

2. ~~School Calendar And Required Days And Hours of Instruction~~

~~Delaware Code, Title 14, Section 1049 as amended in January 1996 gives local school boards the following authority concerning the school calendar and hours of instruction:~~

~~a. Local school boards will determine the hours of daily school sessions, holidays when district schools will be closed and days on which teachers attend educational improvement activities.~~

~~b. District calendars shall be adopted by April 30 for the ensuing year and may only be amended following 30 days public notice.~~

~~c. Requirements Related to Calendar Days~~

~~(1) Grades 1-12 must attend at least 180 days of school.~~

~~(2) Kindergarten students must attend 176 days of school in either a morning or afternoon session or the equivalent.~~

~~(3) Up to 4 days per semester may be abbreviated for parent teacher conferences, curriculum development, semester examinations, or other school improvement activities.~~

~~(a) Except for the first and last day of the school year any such abbreviated day shall be at least 3 1/2~~

~~hours exclusive of lunch and shall not be scheduled on a school day preceding a scheduled holiday.~~

~~(b) Morning and afternoon sessions of kindergarten shall be alternated on such abbreviated days.~~

~~d. Requirements Related to Hours~~

~~(1) For grades 1-12 the length of the regular school day shall be at least six hours exclusive of lunch.~~

~~(a) A district may schedule days with fewer than six hours so long as the total scheduled hours of instruction do not fall below 1,060 hours.~~

~~(2) The actual hours of instruction may be less than 1,060 hours due to unplanned delays or early dismissals of not more than two hours in each instance which are caused by weather or other unforeseen emergency circumstances.~~

The Secretary seeks the consent of the State Board of Education to repeal the regulation on Technology, I.L.7., page A-39 in the Handbook for K-12 Education. The repeal is necessary because it is simply a technical assistance statement and does not regulate anything.

TECHNOLOGY

FROM HANDBOOK FOR K-12 EDUCATION

7. TECHNOLOGY

a. Philosophy

Technological advancements have become a part of our society affecting all segments of our lives. Educators recognize the potential of these advancements in supporting instruction, preparing students for a technological age and assisting with information management.

At all levels of education, educators are very interested in the effect technology has on instruction and have implemented various technologies to enhance instruction. The state recognizes the need to establish priorities for instructional technology, coordinate the use of technology, and promote training and staff development to assure full benefit of technology.

b. Specific information on the Technology issues can be found in the State Instructional Technology Plan.

(State Board Approved April 1990)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****OFFICE OF VITAL STATISTICS**

Statutory Authority: 16 Delaware Code,
Section 3102 (16 Del.C. 3102)

Notice of Public Hearing

The Office of Vital Statistics, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss proposed Regulations for the Vital Statistics Code (Title XVI, Chapter 31, Delaware Code). These proposed regulations describe procedures the Office of Vital Statistics will utilize in registering, maintaining, and releasing vital events for the State of Delaware.

This public hearing will be held on Monday, March 15, 1999 beginning at 10:00 a.m. in Room 309, Jesse Cooper Building, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

Mr. Michael Richards
Office of Vital Statistics
Division of Public Health
Jesse Cooper Building
P. O. Box 637
Dover, Delaware 19903
Telephone: 302.739.4721

Anyone wishing to present their oral comments at this hearing should contact Mr. Michael Richards at (302) 577-6666 by March 8, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by March 19, 1999 to:

Mr. Michael Richards, Director
Office of Vital Statistics
Division of Public Health
PO Box 637
Dover, Delaware 19903

Regulations for Title 16, Chapter 31 Relating
to Vital Statistics

Del. Code. §3104 has established in the Division of Public Health an Office of Vital Statistics which shall install, maintain and operate the only system of vital statistics throughout this State. The Office of Vital Statistics shall have branch offices in each county. The Department of Health and Social Services shall designate one such branch as the central Office of Vital Statistics, and this branch shall

be responsible for the supervision of the operation of the other vital statistics offices throughout this State.

Regulation 1. Duties and Responsibilities of Branch Offices
(Authorization: Section 3105)

The State Registrar may delegate such duties and responsibilities to branch offices as he or she deems necessary to insure the efficient operation of the system of vital statistics. These duties may include any or all of the following:

(a) The receipt, processing, and maintenance of records of birth, death, fetal death, and marriage occurring within their respective counties. This includes the receipt of these records from the person responsible for their filing, checking them for accuracy and completeness, and forwarding them to the central Office of Vital Statistics at intervals prescribed by the State Registrar.

(b) Issuance of certified copies of birth, death, fetal death and marriage records. The records from which the certified copies are issued shall be those maintained in the branch office or shall be provided by the central Office of Vital Statistics. All forms and procedures used to issue the certified copies shall be provided or approved by the State Registrar. If it is deemed appropriate and feasible, any branch office may be provided access to all birth, death and marriage records filed in Delaware.

(c) Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.

(d) Performing such other duties as may be prescribed by the State Registrar.

Regulation 2. Record Preservation
(Authorization: Section 3107)

When an authorized reproduction of a vital record has been properly prepared by the State Registrar in accordance with Title 29, Chapter 5 of the Delaware Code and when all steps have been taken to insure the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of in accordance with an approved disposition schedule. Such record may not be disposed of, however, until the quality of the authorized reproduction has been tested in accordance with Title 29, Chapter 5 of the Delaware Code to insure that acceptable certified copies can be issued and until a security copy of such document has been placed in a secure location removed from the building where the authorized reproduction is housed. Such security copy shall be maintained in such a manner to insure that it can replace the authorized reproduction should the authorized reproduction be lost or destroyed.

The State Registrar shall update the appropriate retention and disposition schedules as necessary. The State Division of Historical and Cultural Affairs shall adhere to applicable state laws and regulations pertaining to vital records.

Regulation 3. Form and Completion of Certificates and Reports (Authorization: Sections 3108 & 3109)

Regulation 3.1. Media, Forms, Certificates, Electronic Data Files.

All forms, certificates, records, electronic data files, and reports used in the system of vital statistics are the property of the Department of Health and Social Services and shall be surrendered to the State Registrar upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. Electronic data records shall be accepted only when standards set by the State Registrar are met.

Regulation 3.2. Requirements for Preparation of Certificates.

All forms, certificates, and reports relating to vital statistics must either be type written or printed legibly in black, unfading ink, or stored on electronic media approved by the State Registrar. All signatures required shall be entered in black, unfading ink or stored electronically. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:

- (a) That does not contain the certifier's name typed or printed legibly;
- (b) that does not supply all items of information called for thereon or satisfactorily account for their omission;
- (c) that contains alterations or erasures;
- (d) that does not contain handwritten signatures as required;
- (e) that is marked "copy" or "duplicate";
- (f) that is a carbon copy;
- (g) that is prepared on an improper form;
- (h) that contains improper or inconsistent data;
- (i) that contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;
- (j) that is not prepared in conformity with regulations or instructions issued by the State Registrar.

Regulation 4. Disclosure and Copies of Data from Vital Records (Authorization: Section 3110)

To protect the integrity of vital records:

(a) The State Registrar or other custodians of vital records shall not permit inspection of these records, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant is authorized to obtain a copy or abstract of such record.

(1) Family members doing genealogical research and genealogists representing a family member may obtain copies of records needed for their research. Unless the registrant is deceased, appropriate authorizations shall be required from the registrant or relevant family members as defined in section 3110(b) for the release of the records. If family members, or genealogists representing them, are unable to establish the death of a registrant or to identify those closer family members authorized by Section 3110(b), they may obtain copies of marriage and death records only upon presentation of evidence satisfactory to the State Registrar that they are directly descended from a parent or grandparent of the registrant.

(2) The term "authorized representative" shall include an attorney, physician, funeral director, or other designated agent acting in behalf of the registrant or his or her family.

(3) The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be authorized to obtain copies or abstracts of the record.

(b) The State Registrar or local custodian shall not issue a certified copy of a record until the applicant has provided sufficient information to locate the record. Whenever it shall be deemed necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(c) When 72 years have elapsed after the date of birth, or 40 years have elapsed after the date of death or marriage, such records in the custody of the State Registrar shall become available to any person upon submission of an application containing sufficient information to locate the record. The State Registrar shall collect the same fee for each copy issued or search of the files made, as is charged for a single certified copy. The same fee shall apply for vital records in the possession of the Division of Historical and Cultural Affairs.

(d) All forms and procedures used in the issuance of certified copies of vital records in the state shall be uniform and provided or approved by the State Registrar. All certified copies issued shall have security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection. All certified copies

shall include, at a minimum, the following security features:

- (1) sensitized security paper;
- (2) background security design;
- (3) copy void pantograph;
- (4) consecutive numbering;
- (5) engraved border;

(e) A certified copy or other copy of a death certificate containing the cause of death information shall not be issued except as follows:

(1) Upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives; or

(2) when a documented need for the cause of death to establish a legal right or claim has been demonstrated; or

(3) when the request for the copy is made by or on behalf of an organization that provides benefits to the decedent's survivors or beneficiaries; or

(4) upon specific request by local, state, or Federal agencies for research or administrative purposes approved by the Department of Health and Social Services; or

(5) when needed for statistical or research activities provided requests for such information conform to the Regulations Governing The Release of Vital Statistics Data For Research And Statistical Purposes established by the Department of Health and Social Services; or

(6) upon receipt of an order from a court of competent jurisdiction ordering such release.

(f) Nothing in these regulations shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the certificate of birth or the "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of divorce or annulment unless specifically authorized by the Department of Health and Social Services for statistical or research purposes. Such data shall not be subject to subpoena or court order and shall not be admissible before any court, tribunal, or other judicial body.

(g) When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she shall withhold issuance of any copy of that certificate pending an administrative hearing. The sole purpose of the hearing shall be to determine whether there is sufficient evidence to continue to withhold issuance of copies of said certificate. The State Registrar shall offer the registrant or the registrant's authorized representative notice and opportunity to be heard. If upon conclusion of the hearing no fraud or misrepresentation is found, copies may be issued. If upon conclusion of the hearing fraud or misrepresentation is found, the State Registrar shall remove the certificate from the file. The certificate and evidence shall be retained but shall not be subject to inspection or copying except upon order of a court of competent jurisdiction or by the State Registrar for purposes of administering the vital statistics program.

Regulation 5. Birth Registration
(Authorization: Section 3121)

Regulation 5.1. Out-of-Institution Birth - Documentary Evidence.

When a birth occurs in Delaware outside of a hospital or institution, and the birth certificate is filed before six months, additional evidence in support of the facts of birth may be required.

A certificate for the birth shall be completed and filed upon presentation of the following evidence by the individual responsible for filing the certificate:

(a) Evidence of pregnancy, such as but not limited to:

(1) Prenatal record, or

(2) a statement from a physician or other health care provider qualified to determine pregnancy, or

(3) a home visit by a public health nurse or other health care provider, or

(4) other evidence acceptable to the State Registrar.

(b) Evidence that the infant was born alive, such as but not limited to:

(1) A statement from the physician or other health care provider who saw or examined the infant, or

(2) an observation of the infant during a home visit by a public health nurse, or

(3) other evidence acceptable to the State Registrar.

(c) Evidence of the mother's presence in this state on the date of the birth, such as but not limited to:

(1) If the birth occurred in the mother's residence,

(a) A driver's license, or a state-issued identification card, which includes the mother's current residence on the face of the license/card, or

(b) a rent receipt that includes the mother's name and address, or

(c) any type of utility, telephone, or other bill that includes the mother's name and address, or

(d) other evidence acceptable to the State Registrar.

(2) If the birth occurred outside of the mother's place of residence, and the mother is a resident of Delaware, such evidence shall consist of:

(a) An affidavit from the tenant of the premises where the birth occurred, that the mother was present on those premises at the time of the birth, and

(b) evidence of the affiant's residence similar to that required in paragraph (c)(1) of this regulation, and

(c) evidence of the mother's residence in Delaware similar to that required in paragraph (c)(1) of this regulation, or

(d) Other evidence acceptable to the State Registrar.

(3) If the mother is not a resident of Delaware,

such evidence must consist of clear and convincing evidence acceptable to the State Registrar.

Regulation 5.2. Determination of Mother.

For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate.

Regulation 6. Infants of Unknown Parentage; Foundling Registration (Authorization: Section 3122)

The report for an infant of unknown parentage shall be registered on a current certificate of live birth and shall:

- (a) Have "foundling" plainly marked in the top margin of the certificate;
- (b) show the required facts as determined by approximation and have parentage data left blank;
- (c) show the name and title of the custodian in lieu of the attendant.

If a report of a foundling is later placed in a special file as provided by Section 3122(d) of the Delaware Code, the State Registrar may inspect such information for purposes of properly administering the vital statistics program or as otherwise provided by state law.

**Regulation 7. Death Registration
(Authorization: Section 3123)**

Regulation 7.1. Acceptance of Death Certificate with Incomplete Personal Information.

If all the personal information necessary to complete a certificate of death is not available within the time prescribed for filing of the certificate, the funeral director or person acting as such, shall file the certificate with all information that is available and satisfactorily account for all the items that are omitted.

A supplemental report providing the personal information omitted from the original certificate shall be filed by the funeral director or person acting as such with the State Registrar as soon as possible, but in all cases within 30 days of the date the death occurred.

The supplemental report shall be used to revise the existing certificate of death; and the certificate of death shall be marked "Revised".

Regulation 7.2. Replacement of Pending Certificate

When a pending certificate of death is filed pursuant to Section 3123(e), a revised certificate of death providing the medical information omitted from the original certificate shall be completed by the certifier within thirty days of the date the death occurred, or within sixty days if an extension has been applied for through the State Registrar. The revised

certificate shall be forwarded to the funeral director or person acting as such. The funeral director will complete all the personal information and file the revised certificate of death with the Office of Vital Statistics. The revised certificate of death shall replace the pending certificate of death and shall be considered the original. Such certificate shall not be marked "Revised".

Regulation 7.3. Hospital or Institution May Assist in Preparation of Certificate.

When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the medical examiner, the person in charge of such institution, or his or her designated representative, may initiate the preparation of the certificate of death as follows:

- (a) (1) Place the full name of the decedent and the date, time, and place of death on the certificate of death and obtain the medical certification of cause of death from the attending physician or;
- (2) place the full name of the decedent and the date, time, and place of death on the certificate of death and obtain the pronouncing physician's attestation.
- (b) present the partially completed certificate of death to the funeral director or person acting as such.

**Regulation 8. Adoption
(Authorization: Section 3126)**

Regulation 8.1. Certificates.

(a) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof. This report shall include such facts as are necessary to identify the original certificate of adoption and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

(b) When the State Registrar shall receive a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside Delaware, he or she shall forward such certificate or report to the State Registrar in the state of birth.

Regulation 8.2. New Certificate.

The new certificate of birth prepared after adoption shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certificate:

- (a) The name of the child;
- (b) the date and city and/or county of birth as transcribed from the original certificate;
- (c) the names and personal particulars of the adoptive parents;
- (d) the name of the attendant, printed or typed;
- (e) the State File number assigned to the original certificate of birth;

(f) the original filing date

The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar on forms prescribed or approved by him or her.

Regulation 8.3. Existing Certificate to Be Placed in a Special File.

After preparation of the new certificate, the existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital statistics program or as otherwise provided by state law.

Regulation 9. Acknowledgement or Establishment of Paternity (Authorization: Section 3127)

The new certificate of birth prepared after acknowledgement or establishment of paternity shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certificate:

- (a) The name of the child;
- (b) the date and city and/or county of birth as transcribed from the original certificate;
- (c) the names and personal particulars of the natural parents;
- (d) the name of the attendant, printed or typed;
- (e) the State File number assigned to the original certificate of birth;
- (f) the original filing date.

The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar on forms prescribed or approved by him or her.

Regulation 10. Amendment of Vital Records (Authorization: Section 3131)

Regulation 10.1. Amendment of Minor Errors on Birth Certificates During the First Year.

Amendment of obvious errors, transposition of letters in words of common knowledge, or obvious omissions may be made by the State Registrar within the first year after the date of birth either upon his or her own observation or query or upon request of a person as defined in Regulation 10.3. When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate in such a way as not to become a part of any certified copy issued. The certificate shall not be

marked "Amended."

Regulation 10.2. All Other Amendments.

Unless otherwise provided in these regulations or in the statute, all other amendments to vital records shall be supported by:

- (a) An affidavit setting forth:
 - (1) Information to identify the certificate;
 - (2) the incorrect data as it is listed on the certificate;
 - (3) the correct data as it should appear; and
- (b) One or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

The State Registrar shall evaluate the evidence submitted in support of any amendment, and when he or she finds reason to doubt its validity or adequacy, the amendment may be rejected and the applicant advised of the reasons for this action.

Regulation 10.3. Who May Apply.

(a) To amend a certificate of birth, application may be made by one of the parents, if the registrant is under age 18; the guardian, the registrant if 18 years of age or over; or the individual responsible for filing the certificate.

(b) To amend a certificate of death, application may be made by the next of kin, the informant listed on the certificate of death, or the funeral director or person acting as such who submitted the certificate of death. Applications to amend the medical certification of cause of death may be made only by the physician who provided the medical certification or the medical examiner.

(c) To amend a certificate of marriage, application must be made jointly by both parties to the marriage or by the survivor. In the event the marriage to which the application relates was terminated by divorce or annulment on or before the date of application for amendment, the applicant may request amendment only of those items on the certificate of marriage which relate to the applicant.

Regulation 10.4. Amendment of Registrant's Given Names on Certificates of Birth Within the First Year.

Until the registrant's first birthday, given names may be amended upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

After one year from the date of birth the provisions of Regulation 10.2 must be followed to amend a given name if the name was entered incorrectly on the certificate of birth. A legal change of name order must be submitted from a court of competent jurisdiction to change a given name after one year.

Regulation 10.5. Addition of Given Names on Certificates of Birth.

Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

After seven years the provisions of Regulation 10.2 must be followed to add a given name.

Regulation 10.6. Legal Change of Name.

Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in Delaware and upon request of such person or his or her parents, guardian, or legal representative, the State Registrar shall amend the certificate of birth to show the new name.

Regulation 10.7. Amendment of Cause of Death.

The cause of death may be amended only upon receipt of a signed statement or an approved electronic notification from the physician or medical examiner who originally certified the cause of death. In the absence or inability of the physician or with his or her approval the cause of death may be amended upon receipt of a signed statement or an approved electronic notification from his or her associate physician, or the chief medical officer of the institution in which death occurred, or a medical examiner who assumes jurisdiction of the case provided such individual has access to the medical history of the case. The State Registrar may require documentary evidence to substantiate the requested amendment.

Regulation 10.8. Amendment of the Same Item More than Once.

Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of a court order from a court of competent jurisdiction.

Regulation 10.9. Methods of Amending Certificates.

Certificates of birth, death, and marriage may be amended by the State Registrar in the following manner:

(a) Completing the item in any case where the item was left blank on the existing certificate.

(b) Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry.

(c) Amending a record maintained in an electronic file by changing the item(s) to be amended. The date of the amendment must be made part of the record and the original information must also be retained.

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of an

individual born in Delaware has been changed by surgical procedure and whether such individual's name has been changed, the certificate of birth of such individual shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.

Regulation 10.10. Denial of Amendment.

When an applicant does not submit the minimum documentation required for amending a vital record or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal to a court of competent jurisdiction.

Regulation 10.11. Notification of Amendment.

(a) When a certificate or report is amended under this section by the State Registrar, the State Registrar shall report the amendment to any other custodian of the vital record and their record shall be amended accordingly.

(b) When an amendment is made to a certificate of marriage by the local official issuing the marriage license, copies of such amendment shall be forwarded to the State Registrar.

Regulation 11. Delayed Registration of Birth
(Authorization: Section 3131)

Regulation 11.1. Delayed Certificate of Birth Form.

All certificates registered six months or more after the date of birth are to be registered on a delayed certificate of birth form prescribed and furnished by the State Registrar.

Regulation 11.2. Who May Request the Registration of a Delayed Certificate of Birth.

Any person born in Delaware whose birth is not recorded in the state, his/her parent or guardian, or any other person age 18 or older acting for the registrant and having personal knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to these regulations and instructions issued by the State Registrar.

Each application for a delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is 18 years of age or over and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the application shall be signed and sworn to by one of the parents of the registrant, his/her guardian, or any other person age 18 or older having personal knowledge of the facts of birth.

Regulation 11.3. Facts to be Established for a Delayed Registration of Birth.

The minimum facts which must be established by documentary evidence shall be the following:

- (a) The full name of the person at the time of birth;
- (b) the date of birth and state of birth;
- (c) the full maiden name of the mother;
- (d) the full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in Regulation 11.4.

Regulation 11.4. Delayed Registration Following a Legal Change of Status.

When evidence is presented reflecting a legal change of status by adoption, legitimation, or acknowledgment of paternity, a new delayed certificate may be established to reflect such change. The existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital statistics program.

Regulation 11.5. Documentary Evidence - Requirements.

To be acceptable for filing, the name of the registrant at the time of the birth and the date and place of birth entered on a delayed certificate of birth shall be supported by at least:

- (a) A hospital record created at the time of birth, or two pieces of acceptable documentary evidence, if the record is filed within ten years after the date of birth; or
- (b) three pieces of acceptable documentary evidence, if the record is filed ten years or more after the date of birth.

Facts of parentage shall be supported by at least one document.

Regulation 11.6. Documentary Evidence - Acceptability.

The State Registrar shall determine the acceptability of all documentary evidence submitted.

(a) Documents presented, including but not limited to census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth.

(b) All documents submitted in evidence:

- (1) For persons aged ten or older, must have been established at least ten years prior to the date of application, or within three years of the date of birth;
- (2) for persons under ten, must be dated at least one year prior to the date of application or within the first year of life.

Regulation 11.7. Abstraction of Documentary Evidence.

The State Registrar, or his or her designated representative, shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

- (a) The title or description of the document;
- (b) the name and address of the custodian.
- (c) the date of the original filing of the document being abstracted;
- (d) all birth facts required by Regulation 11.3 contained in each document accepted as evidence.

All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

Regulation 11.8. Verification by the State Registrar.

The State Registrar, or his or her designated representative shall verify:

- (a) That no prior birth certificate is on file for the person whose birth is to be recorded;
- (b) That he or she has reviewed the evidence submitted to establish the facts of birth;
- (c) That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

Regulation 11.9. Dismissal After One Year.

Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all documents submitted in support of such registration shall be returned to the applicant.

Regulation 11.10. Delayed Registration for the Deceased.

No delayed certificate of birth shall be registered for a deceased person.

Regulation 11.11. Denial of Registration.

When an applicant does not submit the minimum documentation required for delayed registration or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

Regulation 12. Delayed Registration of Death

(Authorization: Section 3131)

The registration of a death after the time prescribed by statute and regulations shall be registered on the current

certificate of death form in the manner prescribed below:

(a) If the attending physician or medical examiner at the time of death and the attending funeral director or person who acted as such are available to complete the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed six months or more after the date of death, the physician or medical examiner and the funeral director or person who acted as such must state in accompanying affidavits that the information on the certificate is based on records kept in their files.

(b) In the absence of the attending physician or medical examiner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the decedent and shall be accompanied by two documents which identify the decedent and his or her date and place of death.

In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

Regulation 13. Delayed Registration of Marriage (Authorization: Section 3131)

The registration of a marriage after the time prescribed by statute shall be made on the current certificate of marriage form in the manner prescribed below:

(a) The certificate must be filed with the Clerk of the Peace where the marriage license was originally issued.

(b) To be acceptable for registration by the State Registrar the delayed certificate of marriage must be supported by:

(1) A copy of the license or of the application for license if the license was granted, and

(2) a signed statement from the officiant or the custodian of the records of the officiant and from one witness to the wedding ceremony indicating that a marriage ceremony was performed and the date and place of the marriage.

(c) In all cases, the State Registrar may require additional documentary evidence to prove the facts of marriage.

(d) When an applicant does not submit the minimum documentation required for delayed registration or when the State Registrar has cause to question the validity or adequacy of the statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of marriage and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

DIVISION OF MENTAL RETARDATION Statutory Authority: 31 Delaware Code, Section 505 (31 Del.C. 505)

Public Notice DMR Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Mental Retardation is amending its eligibility criteria.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than March 3, 1999, at the DMR Administrative Office, Jesse Cooper Building, Federal Street, Dover, DE 19903, attention Susan Morrison Smith. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Division of Mental Retardation office will be available for public inspection in the DMR Administrative Office at the address given above. Please call (302) 739-4881, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

Revision:

~~“Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.”~~

The Division of Mental Retardation provides services to those individuals whose disability meets all of the following conditions:

(A) (i) is attributable to mental retardation (1992 AAMR definition) and/or (ii) Autism (DSM IV) and/or (iii) Prader Willi (documented medical diagnosis) and/or (iv) is attributable to a neurological condition closely related to mental retardation because such condition results in an impairment of general intellectual functioning and adaptive

behavior similar to persons with mental retardation and requires treatment and services similar to those required for persons with impairments of general intellectual functioning

(B) manifested before age 22

(C) is expected to continue indefinitely

(D) results in substantial functional limitations in 2 or more of the following adaptive skill areas:

- 1) communication
- 2) self-care
- 3) home living
- 4) social skills
- 5) community use
- 6) self-direction
- 7) health and safety
- 8) functional academics
- 9) leisure
- 10) work

(E) reflects the need for lifelong and individually planned services

(F) intellectual functioning and adaptive behavior is determined by using established standardized tests approved by the Division.

percent reduction held in reserve in case of failure to meet the emission target levels in 1999.

3. Possible Terms of The Agency Action:
None

4. Statutory Basis or Legal Authority to Act:
• 7 Del. C., Chapter 60 Section 6010
• Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:
None

6. Notice of Public Comment:
March 16, 1999 6:00 p.m. DNREC Auditorium, 89 Kings Highway, Dover, DE

7. Prepared by:
Alfred_R. Deramo, Program Manager (302) 739-4791
January 15, 1999

Amendments to The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties (Submitted to US EPA in December 1997)

For Demonstrating Progress Toward Attainment of the National Ambient Air Quality Standard for Ground-Level Ozone

Submitted by Delaware Department of Natural Resources and Environmental Control, Dover, Delaware

January 1999

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

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

REGISTER NOTICE

1. Title of the Regulations:

Amendments to the Delaware 1999 Rate-of-progress Plan for Kent and New Castle Counties: for Demonstrating Progress Toward Attainment of the National Ambient Air Quality Standard for Ground Level Ozone

2. Brief Synopsis of the Subject, Substance and Issues:

The Amendments consist of 1) updated calculations of emission reduction credits resulting from the imposition of facility caps on NOx emissions as required by Air Quality Regulation #37; 2) the removal from the original Plan of the peak ozone season equivalent of 8.5 tons per year of credited reductions attributed to emission controls on the spill diversion tank at Motiva Enterprises' waste water treatment system; 3) the inclusion of a contingency plan to cover the Clean Air Act requirement for a minimum of an additional 3

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the Attainment Demonstration, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, February 1994.

10. Guidance on Issues Related to 15 Percent Rate-of-Progress Plans, Policy memorandum, M.H. Shapiro, Acting Assistant Administrator for Air and Radiation, US EPA, Washington D.C., August 23, 1993.

11. Procedures for Emission Inventory Preparation Vol. IV: Mobile Sources, EPA-450/4-81-026d (Revised), Office of Air and Radiation and Office of Mobile Sources, US EPA, Ann Arbor, Michigan, and Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, 1992.

1. INTRODUCTION

The Clean Air Act Amendments of 1990 (Ref. 1, hereafter referred to as CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants. Two counties in Delaware, i.e., Kent and New Castle, exceed the 1-hour ground-level ozone standard, and have been classified by US Environmental Protection Agency (EPA) as severe nonattainment areas. Under Section 182(d) of the CAAA, Delaware is required to submit to EPA a revision of its State Implementation Plan (SIP), for every 3-year period after 1996, that achieves an actual VOC emission reduction of at least 3% per year over the 3-year period for these two counties. Under certain conditions, the CAAA allows substitution of anthropogenic nitrogen oxides (NO_x) emission reductions for the post-1996 VOC emission reduction requirements (Ref. 2). The revision of Delaware's SIP for the period of 1996-1999, termed as Delaware 1999 Rate-of-Progress Plan was submitted to EPA in December, 1997 (Ref. 3, hereafter referred to as the Delaware 1999 RPP or simply 1999 RPP). Detailed information regarding the CAAA's requirements for attaining the 1-hour NAAQS for the ground-level ozone, as well as Delaware's state implementation plans for meeting these requirements, can be found in Delaware's 1999 RPP (Ref. 3).

This document contains amendments to Delaware's 1999 Rate-of-Progress Plan submitted to EPA in December, 1997. The document will specify individual portions of the original 1999 RPP that are being amended. In brief, the amendments include (1) reevaluations of some VOC and NO_x emission reductions in Part III of the 1999 RPP, (2) recalculation of VOC and NO_x emission reductions in the milestone year of 1999 to meet the rate-of-progress requirements, and (3) development of a contingency plan for the 1999 RPP. The portions in the original 1999 RPP that are not amended by this document remain valid.

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Darryl

D. Tyler, Program Administrator. The working responsibility for Delaware's air quality planning falls within the Planning and Community Protection Branch of the Air Quality Management Section of DNREC, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of Emissions Research, Planning and Attainment Group within the Planning and Community Protection Branch, is the project manager and chief editor of this document. The following personnel under Alfred R. Deramo are instrumental in preparing this document:

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2. Reevaluations of VOC and NO_x emission reductions

2.1 VOC Emission Reductions from Benzene Waste Rule and Delaware Regulation 24.28

This subsection shall replace the corresponding subsection on page 3-43 of the 1999 RPP, entitled "3. Benzene Waste Rule".

The waste water treatment system at the facility of Motiva Enterprises (formerly Star Enterprise) in New Castle County (Point 50, SCC 30600503) is subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP), Benzene Waste Rule (40CFR61 Subpart FF), and Section 28 of Delaware Air Regulation 24 (Ref. 5, hereafter referred to as Regulation 24.28). Process modifications and emission controls having been planned and implemented for the system to comply with the above rule and regulation can reduce VOC emissions significantly. A detailed discussion of these process modifications and the associated VOC emission reductions is included in Appendix M, as amended in and attached to this document. The 1999 Control Strategy Projection emissions are determined using point source projection Equation P-3 (page 3-10, 1999 RPP) with a control efficiency of 86.6% as derived and explained in the amended Appendix M.

As calculated in the amended Appendix M, the 1999 Control Strategy Projection for VOC emissions from Motiva's wastewater treatment plant is 0.763 TPD in the peak ozone season. The corresponding 1999 Current Control Projection for this source is 2.485 TPD. Thus, the total VOC emission reduction from this source is:

$$ER_{1999} \text{ (TPD)} = 2.485 - 0.763 = 1.722 \text{ TPD in the peak ozone season}$$

The VOC emission reductions expected at Motiva's wastewater treatment plant are from process modifications and controls planned by Motiva to comply with either the Federal Benzene Waste Rule or Delaware Air Regulation 24.28 for petroleum refinery. In July 1992, DNREC acknowledged a total of 75 TPY VOC emission reductions from the spill diversion tank (a component unit of the wastewater treatment system) to offset VOC emissions from Motiva's then-planned ether project (DNREC Secretary's Order No. 92-0044, July 14, 1992). Since Motiva has estimated that the ether project would lead to a VOC emission increase of only 66.5 TPY, an extra credit of 8.5 TPY (i.e., $75 - 66.5 = 8.5$ TPY) could remain unused. Delaware decides not to use this extra 8.5 TPY credit in its 1999 RPP. It should be pointed out that the 1.722 TPD VOC emission reductions calculated above do not include this extra acknowledged credit (Appendix M).

2.2 NOx Emission Reductions from Delaware RACT Applicable Point Sources in Kent County

This subsection amends Table 3-15 of the original 1999 RPP (page 3-50), entitled "NOx Emission Reductions from Delaware NOx RACT Applicable Sources in Kent County". The amended Table 3-15 provided herein shall replace the original Table 3-15.

In the original Table 3-15, six sources (or nine records) in Kent County are listed as affected by Delaware NOx RACT regulations (Ref. 5). Among them, the sources of Dover Electric and the source of Kraft General Foods have become affected by Delaware Air Regulation 37, the NOx Budget Program (Ref. 8), after the regulation was promulgated in December 1997. Emission reductions from these sources will be discussed in the next subsection of this document. As a result, only the three sources at Dover Air Force Base are still affected by the relevant NOx RACT controls. The amended Table 3-15 lists these three sources and the corresponding NOx emission reductions from them. Calculations of emission reductions from these three sources presented in the original 1999 RPP remain valid. As shown in the amended table, the total NOx emission reductions from these three sources are 0.018 TPD. Delaware will take this 0.018 TPD reduction, instead of 1.051 TPD as indicated in the original Table 3-15, as reduction credit to meet the rate-of-progress requirements for the milestone year of 1999.

Table 3-15 (Amended)

NOx Emission Reductions from Delaware NOx RACT Applicable Point sources in Kent County (in TPD)

Plant Name	Point	Source SCC	1990 Emission (TPD)	1990 Emission Rate (lb/mmBTU)	Applicable Control Technology	1990 Capacity Factor (%)	Control Efficiency (%)	Growth Factor	Current Control Proj. (a)	Control Strategy Proj. (b)	1999 NOx Emission Reduction (c)=(a)-(b)
Dover Air Force Base	1	1-03-004-01	0.050	0.367	LNB1	--	35.0	1.10	0.055	0.040	0.015
	2	1-03-004-01	0.030	0.368	<5% Capacity	2	8.4	1.10	0.033	0.031	0.002
	4	1-03-004-01	0.017	0.372	<5% Capacity		7.63	2.6	1.10	0.019	0.018
Total Reduction (TPD)											0.018

¹ Low NOx Burning technology.

² Operation at less than 5% maximum capacity during the peak ozone season.

2.3 NOx Emission Reductions from OTC Regional Controls and Delaware Regulation 37

This subsection shall replace a corresponding subsection from page 3-53 to page 3-57 in the 1999 RPP, entitled "7. OTC Regional NOx MOU Controls for

Stationary Sources".

In late 1994, the States of the Ozone Transport Commission (OTC), including Delaware, adopted a Memorandum of Understanding (MOU) on emission reductions from certain large stationary NOx sources within the Ozone Transport Region (Ref. 6). The OTC MOU specifies regional control strategies that require reductions in NOx emissions from fossil fuel-fired boilers and indirect heat exchangers with maximum gross heat input of at least 250 million British thermal units per hour (mmBTU/hr) and

electric generating units greater or equal to 15 megawatts (MW). The MOU requires the OTC States to develop regulations for the control of NOx emissions from those NOx sources in two phases, i.e., Phase II and Phase III. Further, the MOU specifies the level of reductions in the OTC's "Inner Zone" consisting of central eastern portion of the OTC, and the "Outer Zone" consisting of the remainder of the OTR. For Delaware, Kent and New Castle Counties fall in the inner zone and Sussex in the outer zone.

The Phase II of the OTC regional control strategy requires the affected sources to reduce NOx emissions by 65% of their 1990 emission levels, or to limit NOx emission rates below 0.20 lbs/mmBTU, by May 1, 1999. The Phase III strategy requires a NOx emission reduction of 75% of the 1990 level, or an emission rate limit of 0.15 lbs/mmBTU, by May 1, 2003. The OTC States have developed the 1990 OTC NOx Baseline Emission Inventory (Ref. 7). In this document, the OTC States have (1) developed the 1990 NOx emission baselines for all relevant sources, and (2) established for these sources emission budgets in terms of total emissions to be allowed between May 1 and September 30 starting from 1999 (Phase II) and from 2003 (Phase III). The established 5-month budgets, with limited reserves, will serve as NOx emission caps for the affected sources during the regulated season, i.e., from May 1 to September 30, in the years of corresponding phases.

The OTC MOU Phase II requirements affect Delaware's 1999 Rate-of-Progress Plan. To fulfill the Phase II requirements, Delaware has promulgated its Air Regulation 37, which contains a compliance deadline of May 1999 (Ref. 8, hereafter referred to as Regulation 37). Sources in Kent and New Castle Counties covered by Regulation 37 are listed in Table 3-19 (Amended) along with their SCC codes and 1990 baseline 5-month emission levels.

Based on the OTC MOU Phase II allocated budgets and reserves, the 5-month emission allowances (i.e., the total emissions allowed between May 1 and September 30) have been set forth in Regulation 37 for individual sources listed in Table 3-19 (Amended). Due to the capping nature of the allowances, the control strategy projections for all these sources are calculated using point source projection Equation P-5, as presented in the 1999 RPP (page 3-11). The emission reductions from these sources in 1999 (ER₁₉₉₉) are obtained using the following equation

$$ER_{1999} = EMIS_{1999\text{-current control}} - EMIS_{1999\text{-control strategy}}$$

where EMIS_{1999-current control} is the current control projection emission as determined in Part II of the 1999 RPP, and EMIS_{1999-control strategy} is the control strategy projection emission as determined using Equation P-5. The following is an example of how to calculate NOx emission reduction from an affected source.

Example: NOx Emission Reduction from Implementing OTC Regional Control and Delaware Regulation 37

Delmarva Power Edge Moor Point 002 (Table 3-19, amended) in New Castle County is a source covered by Regulation 37. Emission and control data for this source are as follows:

$$\begin{aligned} CRTPOL &= 4.552 \text{ TPD in peak ozone season;} \\ EMIS_{by5} &= 655.8 \text{ tons in 5 months (May 1 to Sept. 30 in 1990 Base Year);} \\ ER_{py5} &= 242 \text{ tons in 5 months (Regulation 37 allowance, May 1 to Sept. 30 in 1999);} \\ RULEFF &= 100\% \text{ (i.e., no rule effectiveness)} \\ RE_{py} &= 80\%. \end{aligned}$$

The 1999 control strategy projection for this source can be obtained using Equation P-5:

$$EMIS_{py}(TPD) = 4.552(TPD) \times \frac{242(\text{ton}/5\text{mon})}{655.8(\text{ton}/5\text{mon})} \times \frac{(200-80)}{(200-100)} = 2.016 TPD$$

The 1999 current control projection of this source is 4.134 TPD (from page F-76, Appendix F, 1999 RPP). Thus, the NOx emission reduction from this source for the 1999 RPP is

$$ER_{1999} = 4.134 \text{ TPD} - 2.016 \text{ TPD} = 2.118 \text{ TPD}$$

Following the same procedures, the NOx emission reductions from all sources in Kent and New Castle Counties covered by Regulation 37 can be obtained. The results are summarized in Table 3-19 (Amended). In Table 3-19 (Amended), sources of Dover Electric and First State Power are located in Kent County, and all other sources are located in New Castle County. The sum of NOx emission reductions from sources in Kent County is 1.491 TPD, while the sum of NOx emission reductions from sources in New Castle County is 27.416 TPD. The total NOx emission reductions from the two counties due to implementation of Regulation 37 is 28.907 TPD in the peak ozone season. Delaware will take this 28.907 TPD NOx emission reduction, instead of 24.650 TPD as indicated in the original Table 3-19 in the 1999 RPP, as reduction credit to meet the rate-of-progress requirements for the milestone year of 1999.

PROPOSED REGULATIONS

Table 3-19 (Amended).

Sources Affected by OTC NO_x MOU Phase II Regional Controls* and Projected Emission Reductions (in TPD)

Plant Name***	Point	Source SCC	1990 Emission (TPD)	1990 Emission Baseline (Ton/5month)	MOU Phase II Emission Allowance (Ton/5month)	1999 Current Control Projection (TPD)	1999 Control Strategy Projection (TPD)	NO _x Emission Reduction** (TPD)
Delmarva Power Delaware City	002	2-01-001-01	0.003	0.6	2.0	0.003	0.013	-0.010
Delmarva Power Edge Moor	001	2-01-001-01	0.012	0.7	2.0	0.011	0.041	-0.030
New Castle County	002	1-01-002-12	4.552	655.8	242.0	4.134	2.016	2.118
		1-01-004-04						
		1-01-005-01						
		1-01-006-04						
	003	1-01-002-12	8.009	928.7	346.0	8.581	3.580	5.001
		1-01-004-04						
		1-01-005-01						
		1-01-006-04						
	004	1-01-004-01	12.138	1,436.0	650.0	17.865	6.589	11.276
		1-01-005-01						
		1-01-006-01						
		1-01-006-04						
Delmarva Power Hay Road	001	2-01-001-01	0.575	49.0	50.0	0.791	0.704	0.087
	New Castle County	002	2-01-002-01	0.329	33.6	35.0	0.450	0.411
Dover Electric McKee Run Kent County		001	1-01-004-01	1.741	91.6	73.0	0.660	0.863
	002	1-01-005-01						
		1-01-006-01						
003	1-01-004-01	0.429	56.3	45.0	0.445	0.411	0.034	
	1-01-005-01							
	1-01-006-01							
	1-01-006-04	2.980	411.7	186.0	3.577	1.615	1.962	
First State Power Kent County	001	1-02-002-19	1.431	201.2	203.0	1.431	1.732	-0.301
		1-02-004-05						
Motiva Enterprises Delaware City	006	3-06-001-06	0.370	104.3	105.0	0.399	0.446	-0.047
		3-06-001-11						
New Castle County	019	3-06-001-06	0.137	20.1	21.0	0.147	0.171	-0.024
	034	3-06-001-06	0.470	69.5	71.0	0.507	0.576	-0.069
	067	1-01-004-01	1.354	229.0	94.0	1.321	0.667	0.654
		1-01-007-01						
	068	1-01-004-01	4.241	588.5	207.0	4.581	1.790	2.791
		1-01-007-01						
	069	1-01-008-01						
		1-01-004-01	4.301	647.4	228.0	4.646	1.818	2.828
070	1-01-007-01							
	1-01-008-01	4.324	610.7	216.0	4.670	1.835	2.835	
074	1-01-007-01							
074	3-06-001-06	0.263	116.7	118.0	0.284	0.318	-0.034	
Total Reductions	(TPD)							28.907

* The OTC Phase II NO_x Control Strategy has been implemented in Delaware via Delaware Air Pollution Regulation 37. This table does not include four small sources of Delmarva Power (Christiana Substations 1 and 2, Madison Street Substation, and West Substation). The NO_x emissions from these four small sources were not included in Delaware's 1990 Base Year Emission Inventory because they were smaller than the 25 TPD threshold.

** A negative sign indicates an actual emission increase.

*** Plant names changes since 1990: (1) First State Power Point 001 was formerly Kraft General Foods Point 001. (2) Motiva Enterprises was formerly Star Enterprise. Motiva's Point 067 was formerly Delmarva Power's Point 001 at Delaware City.

2.4 Summary of VOC and NO_x Emission Reductions after Amendments

As a result of the amendments in the foregoing subsections, VOC and NO_x emission reductions in 1999 from the affected sources have changed, and thus the total

VOC and NO_x emission reductions for the entire nonattainment area (i.e., Kent and New Castle counties) have changed as well. A summary of these changes is presented in Table 1.

Table 1. Summary of 1999 VOC and NOx Emission Reductions (in TPD)

Control Measure/Source	VOC		NOx	
	Original*	Amended	Original*	Amended
Benzene Waste Rule & Delaware Reg. 24.28	1.743	1.722	-	-
Delaware NOx RACT in Kent County	-	-	1.051	0.018
OTC Regional Controls & Delaware Reg. 37	-	-	24.650	28.907
Nonattainment Area				
Total Reductions	49.553	49.532	36.856	40.080

* Data are obtained from Table 3-8, page 3-26, Delaware 1999 RPP (Ref. 3).

2.5 Requirements for VOC and NOx Emission reductions

As required by the adequate rate-of-progress in emission reductions set forth in the CAAA, Delaware has determined that the required target level of total VOC emissions in its nonattainment areas (i.e., Kent and New Castle counties) in 1999 should be 101.814 tons per day (TPD) in the peak ozone season (page 1-24, 1999 RPP). In the 1999 RPP, Delaware has also shown that the 1999 control strategy projection for VOC emissions (or the actual target level) would be 110.185 TPD which is higher than the required target level (page 1-24, page 3-1, 1999 RPP). Thus, it is necessary for Delaware to use NOx emission reductions to substitute for VOC emission reductions. As explained in the 1999 RPP, Delaware meets all the conditions set forth by EPA for NOx substitution (Section 1.3, page 1-21, Section 1.4, page 1-25, 1999 RPP).

As determined in Part II of the 1999 RPP (Table 2-1, page 2-2), the 1999 current control projections of VOC emissions is 159.738 TPD. Delaware will use the total amended 49.532 TPD VOC emission reductions in its 1999 Rate-of-Progress Plan. As a result, the 1999 control strategy projection for VOC emissions shall be amended to be 110.206 TPD (i.e., 159.738 - 49.532 = 110.206 TPD). This amended control strategy projection shall serve as a new (or amended) 1999 VOC emission target level and replace the original target level of 110.185 TPD (page 1-29, 1999 RPP). Because of this amendment, the rate-of-progress requirements on VOC and NOx emission reductions in 1999 must be reassessed.

First, the creditable VOC emission reductions need to be recalculated. The calculation is shown in the amended Table 1-16, which shall replace the original Table 1-16, page 1-28 of the 1999 RPP, entitled "VOC Emissions Reductions Creditable for 3% per Year Rate of Progress Requirement for 1996-1999 Period in Tons per Peak Ozone Season Day".

Table 1-16 (Amended)

Calculation of Creditable VOC Emission Reductions (in TPD) for 1999 RPP

Description	VOC Emissions	
	(u)	(v)
1996 VOC Emission Target Level*115.815	115.815	
VOC Fleet Turnover for 1996-1999 Period	1.910	(v)
1999 VOC Control Strategy Projection	110.206	(w)
Creditable VOC Emission Reduction	3.699	(x)=(u)-(v)-(w)

*The 1996 VOC emission target level is obtained from Delaware 15% Rate-of-Progress Plan (Reference 4).

Second, the percentage of NOx emission reductions required for substitution needs to be determined. As indicated in the 1999 RPP, the 1990 adjusted base year VOC emission level is 134.343 TPD (page 1-23, 1999 RPP). The percentage of the creditable VOC emission reductions in Table 1-16 (Amended) with respect to the 1990 adjusted base year emission is 2.75% (i.e., 3.699/134.343=0.0275=2.75%). The percentage of NOx emission reductions required for substitution can be determined from EPA's requirement, that is, the total percentage of VOC and NOx emission reductions must be at least equal to 9% for the 3-year period of 1996-1999. Thus, the required NOx emission reduction for substitution will be 9.00% - 2.75% = 6.25%. In other words, the total percentage of VOC reduction plus NOx reduction must be at least 9%, as shown in Table 1-17 (Amended), which shall replace the original Table 1-17, page 1-28, 1999 RPP, entitled "Percent of VOC and NOx Emissions Reductions Needed for 1996-1999 Period".

Table 1-17 (Amended)

Percents of VOC and NOx Emission Reductions for 1996-1999 Period

Milestone Period	VOC Reduction (%) (a)	NOx Reduction (%) (b)	Total Reduction (%) (c)=(a)+(b)
1996 - 1999	2.75	6.25	9.00

As indicated in Table 1-15 of the 1999 RPP, the total 1990 adjusted base year NOx emission is 158.895 TPD (page 1-27, 1999 RPP). By multiplying with the NOx substitution percentage in Table 1-17 (Amended), the NOx emission reductions in 1999 must be at least 158.895x6.25% = 9.931 TPD to meet the rate-of-progress requirements. As a result, the target level of NOx emissions in 1999 will be 158.895 - 9.931 = 148.964 TPD.

As determined in Part II of the 1999 RPP (Table 2-1, page 2-2), the 1999 current control projections of NOx emissions is 184.059 TPD. To meet the 1999 NOx emission target of 148.964 TPD, a NOx emission reduction of 35.095 TPD must be achieved (i.e., 184.095 - 148.964 = 35.095 TPD). Since the 1999 NOx emission reductions are expected to be 40.080 TPD, which is greater than the

required 35.095 TPD, Delaware believes that the control measures proposed in the 1999 RPP, as amended by this document, are adequate for meeting the rate-of-progress requirements set forth by the CAAA. Delaware decides to use 35.095 TPD of the total expected 40.080 TPD (Table 1 in the previous subsection) in the main plan of the 1999 RPP, and use the remainder (i.e., $40.080 - 35.095 = 4.986$ TPD) in the contingency plan of the 1999 RPP.

3. Contingency Plan of Delaware's 1999 RPP

3.1 Contingency Requirements for Emission Reductions

The CAAA requires States with nonattainment areas to implement specific control measures if the area fails to make reasonable further progress, fails to meet any applicable milestone, or fails to attain the national ambient air quality standards by the applicable attainment date.¹ The EPA has interpreted this CAAA provision as a requirement for States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their Rate-of-Progress Plans so that, upon implementation of such measures, additional emission reductions of at least 3% of the adjusted 1990 base year emissions would be achieved (Ref. 9). Under the same provision of the CAAA, EPA also requires that the contingency measures must be fully-adopted control measures or rules, so that, upon failure to meet milestone requirements or attain the standards, the contingency measures can be implemented without any further rulemaking activities by the States and/or EPA.

To meet the requirements for contingency emission reductions, EPA allows States to use NO_x emission reductions to substitute for VOC emission reductions in their contingency plans. The condition set forth by EPA for NO_x substitution is that States must achieve a minimum of 0.30% VOC reductions of the total 3% contingency reduction, and the remaining 2.70% reduction can be achieved through NO_x emission controls (Ref. 10). Delaware decides to include both VOC and NO_x emission controls in its contingency plan for the 1999 Rate-of-Progress Plan.

¹ CAAA, Title I, Part D, Section 172(c)(9) and Section 182(c)(9).

3.2 Control Measures to Meet Contingency Requirements

Delaware proposes to achieve the required contingency emission reductions through controls over both VOC and NO_x emissions. The VOC emission reductions will be obtained from implementing an annual inspection schedule for the Stage II Vapor Recovery Systems, and the NO_x emission reductions will be achieved through a combination of controls on various sources in the peak ozone season. The contingency measures and the associated VOC and NO_x emission reductions are discussed in detail in the following

subsections.

3.2.1 Stage II Vapor Recovery System with Annual Inspections

The CAAA requires States with moderate and above ozone nonattainment areas to submit a SIP revision requiring owners or operators of gasoline dispensing facilities to install and operate a system for gasoline vapor recovery during refueling process for motor vehicles.² Under this requirement, Delaware has developed its Stage II Vapor Recovery Program, which is defined in Section 36 of Delaware Air Regulation 24 (Ref. 5). The Delaware's stage II vapor recovery regulation gives the regulatory agency the right to perform compliance inspections as needed. Currently, a triennial inspection schedule is performed by the responsible agency (Underground Storage Tank Branch of DNREC). Delaware has taken credit for VOC emission reductions from this triennial inspection schedule in Part III of the 1999 RPP, where the emission reductions are estimated using a control efficiency (CE) of 95%, a rule penetration (RP) of 97%, and a rule effectiveness (RE) of 65.3% according to an EPA guidance document (page 3-69, 1999 RPP). The total creditable VOC emission reduction from the triennial inspection is 1.780 TPD, as indicated in Part III of the 1999 RPP (page 3-72).

Additional VOC emission reductions can be obtained from the Stage II Vapor Recovery Program when the inspection frequency is increased. If the program is conducted with an annual inspection schedule, the rule effectiveness (RE) value of this control will increase from 65.3% to 90.5%, resulting in additional VOC emission reductions. In other words, the program is more effective for reducing VOC emissions with a higher inspection frequency. Delaware proposes to perform an annual inspection schedule for its Stage II Vapor Recovery Program as a contingency measure. Based on a 95% control efficiency, a 97% rule penetration, and a 90.5% rule effectiveness, the emission factor generated from MOBILE5a is 0.92 grams of VOC per gallon of gasoline for both Kent and New Castle Counties. The MOBILE5a input and output files determining the 1999 stage II annual inspection emission factors for Kent and New Castle Counties are provided in Appendix P.

As per EPA's guidance document Procedures for Emissions Inventory Preparation, Volume IV: Mobile Sources (Ref. 11), the in-use efficiency of stage II vapor recovery system applies to both spillage and displacement. Therefore, the effect of the vapor recovery program on spillage and displacement will be determined separately.

² CAAA, Title I, Part D, Section 182(b)(3).

(a) Effect of Stage II Vapor Recovery with Annual Inspections on Spillage

As explained in Part III of the 1999 RPP (page 3-70), a baseline spillage factor of 0.31 g/gal has been used in the MOBILE5a modeling. The actual spillage factor can be estimated using the 95% control efficiency, 90.5% rule effectiveness, and 97% rule penetration, which gives

$$\text{Spillage Factor} = 0.31 - (0.31 \times 95\% \times 90.5\% \times 97\%) = 0.05 \text{ grams VOC/gallon gasoline}$$

The 1999 Control Strategy Projection of VOC emissions from spillage can be determined using Equation A-3 as explained in the 1999 RPP (page 3-16). Using the 0.05 g/gal emission factor, the projected emissions are:

Kent County:

ACTLEV = 183,131 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.05 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.89$$

$$\text{Conversion Factor} = 0.0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

New Castle County

ACTLEV = 587,283 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.05 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.89$$

$$\text{Conversion Factor} = 0.0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

$$\text{EMISpy} = 587,283 \times 0.05 \times 0.89 \times \frac{0.0022}{2000} = 0.029 \text{ TPD}$$

The additional VOC emission reductions for spillage by switching a triennial inspection schedule to an annual inspection schedule are the differences between the projected emissions for the triennial program and the annual program. The additional reductions are:

Kent County

Projection with triennial inspection (page 3-70, 1999 RPP) = 0.022 TPD;

Projection with annual inspection (calculated above) = 0.009 TPD;

Additional Emission Reduction = 0.022 - 0.009 = 0.013 TPD.

New Castle County

Projection with triennial inspection (page 3-70, 1999 RPP) = 0.069 TPD;

Projection with annual inspection (calculated above) = 0.029 TPD;

Additional Emission Reduction = 0.069 - 0.029 = 0.040 TPD.

Additional VOC Emission Reduction for Spillage:

$$\text{ER}_{\text{spill}} = 0.013 + 0.040 = 0.053 \text{ TPD in the peak ozone season.}$$

(b) Effect of Stage II Vapor Recovery with Annual Inspections on Displacement

As explained in Part III of the 1999 RPP (page 3-70), the emission factor of 0.92 g/gal from MOBILE5a accounts for emissions from both displacement and spillage. Thus, the emission factor for displacement can be determined by subtracting 0.05 g/gal (determined earlier) from 0.92 g/gal, which gives

$$\text{Displacement Factor} = 0.92 - 0.05 = 0.87 \text{ grams VOC/gallon gasoline}$$

The 1999 Control Strategy Projection emissions from displacement can be determined using Equation A-3 as explained in the 1999 RPP (page 3-16). Using the 0.87 g/gal emission factor, the projected emissions are:

Kent County

ACTLEV = 183,131 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.87 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.89$$

$$\text{Conversion Factor} = .0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

$$\text{EMISpy} = 183,131 \times 0.87 \times 0.89 \times \frac{0.0022}{2000} = 0.500 \text{ TPD}$$

New Castle County

ACTLEV = 587,283 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.87 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.90$$

$$\text{Conversion Factor} = .0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

$$\text{EMISpy} = 587,283 \times 0.87 \times 0.89 \times \frac{0.0022}{2000} = 0.500 \text{ TPD}$$

The additional VOC emission reductions for displacement by switching a triennial inspection schedule to an annual inspection schedule are the differences between the projected emissions for the triennial program and the annual program. The additional reductions are:

Kent County

Projection with triennial inspection (page 3-71, 1999 RPP) = 0.294 TPD;

Projection with annual inspection (calculated above) = 0.156 TPD;

Addition VOC Emission Reduction = $0.294 - 0.156$
= 0.138 TPD.

New Castle County

Projection with triennial inspection (page 3-72,
1999 RPP) = 0.943 TPD;

Projection with annual inspection (calculated above)
= 0.500 TPD;

Additional VOC Emission Reduction = $0.943 - 0.500$
= 0.443 TPD.

Additional VOC Emissions Reduction for Displacement:

$ER_{\text{displace}} = 0.138 + 0.443 = 0.581$ TPD in the peak ozone season.

The total additional VOC emission reduction from Stage II Vapor Recovery Program with an annual inspection schedule is the sum of the additional reductions for spillage and displacement, that is,

$ER_{\text{total}} = 0.053 + 0.581 = 0.634$ TPD in the peak ozone season.

In its 1999 Rate-of-Progress Plan, Delaware has determined its 1990 adjusted base year inventory level of VOC emissions to be 134.343 TPD (page 1-23, 1999 RPP). The additional 0.634 TPD VOC emission reduction estimated above is $(0.634/134.343) = 0.0047 = 0.47\%$ of the 1990 adjusted base year VOC emissions, thus, satisfying the 0.30% minimum requirement on VOC emission reductions for the contingency plan. The rest of the contingency reductions will be obtained through NOx controls, which will be discussed in the following subsection.

3.2.2 NOx Emission Controls in Peak Ozone Season

As determined above, 0.47% of the 3.00% contingency requirement will be obtained by VOC emission reductions from annual inspection of Stage II vapor recovery systems. The remaining 2.53% (i.e., $3.00\% - 0.47\% = 2.53\%$) is the percentage required for NOx reduction substitution. The adjusted 1990 base year NOx emission level has been determined to be 158.895 TPD in the 1999 RPP (page 1-27, 1999 RPP). Thus, the NOx emission reductions for contingency purpose will be at least $158.895 \times 2.53\% = 4.020$ TPD.

In Subsection 2.5 of this document, Delaware has demonstrated that, through adequate NOx emission controls, a 4.985 TPD NOx emission reduction will be achieved, in addition to those needed to meet the minimum rate-of-progress requirements for the 1999 RPP. Delaware shall use this additional 4.985 TPD NOx emission reduction in the contingency plan based on the following judgements. First,

this additional reduction satisfies the required minimum amount of NOx reduction substitution for contingency purpose, i.e., 4.020 TPD as determined above. Second, this additional reduction is achieved from a combination of control measures included in Delaware's 1999 RPP as amended by this document. All these control measures are fully-adopted measures or rules. Thus, no further rulemaking actions by the State and/or EPA are needed when all or part of the 4.985 TPD NOx reduction becomes necessary to serve the contingency purpose. Third, unused part of the 4.985 TPD can be transferred to backfill shortfalls in the contingency plan and/or the overall control strategy in Delaware's 2002 and/or 2005 rate-of-progress plans without further rulemaking actions.

3.2.3 Summary of Contingency Measures and Emission Reductions

A summary of the contingency measures and the associated additional VOC and NOx emission reductions are presented in Table 2. As shown in Table 2 and in the discussions above, the contingency measures proposed in this plan are adequate for meeting the contingency requirements set forth by EPA.

Table 2. Summary of Contingency Measures and Emission Reductions

<u>Contingency Measures</u>	<u>Emission Reduction (TPD)</u>	
	<u>VOC</u>	<u>NOx</u>
Stage II Vapor Rec. with Annual Inspection	0.634	-
Required VOC Emission Reductions	0.634	-
NOx Controls in Peak Ozone Season	-	4.986
Minimum NOx Emission Reductions	-	4.020

APPENDIX M (Amended)

VOC EMISSION REDUCTIONS FROM THE FEDERAL BENZENE WASTE RULE AND DELAWARE AIR REGULATION 24.28 AT WASTEWATER TREATMENT PLANT OF MOTIVA ENTERPRISES

(Note: This amended Appendix M shall replace the original version in Delaware's 1999 RPP dated December 1997)

1. Background

In order to comply with the Federal Benzene Waste Rule and Section 28 of Delaware Air Pollution Control Regulation 24 (hereafter referred to as Regulation 24.28), Motiva Enterprises (formerly Star Enterprise) in New Castle County planned to implement a number of process modifications and emission controls to its waste water treatment plant prior to 1996. These modifications and controls include:

- (1) Oily Water Sewer: Using passive ventilation

through carbon canisters for active manholes and sealing inactive manholes.

(2) CPI Separator: Sealing the existing fixed roof, adding a nitrogen blanket, and passively venting emissions to a carbon absorption canister.

(3) API Separator: Using a combination of fixed and floating covers and venting emissions to a carbon absorption canister.

(4) Equalization Tanks: Covering with floating roofs.

(5) Spill Diversion Tank: Covering with a floating roof.

(6) Dissolved Air Flotation Unit: Retrofitting with fixed roof covers and venting emissions to a control device.

In the 1990 Base Year Inventory, VOC emissions from the oily water sewer manholes, the CPI and API separators, the equalization tanks, the spill diversion tanks, and the dissolved air floatation unit were reported as a whole with one value of 2.3130 TPD in the per peak ozone season. In order to project future emissions from the treatment system, a breakdown of the 1990 emissions for individual units with modifications and/or new controls has been developed from information provided by Motiva Enterprises via a letter from Motiva's Plant Manager, R.G. Soehlke, to R. Taggart, Program Manager, Engineering and Compliance Section of DNREC, dated on March 6, 1992 (Attachment 1). A summary of the breakdown of 1990 base year emissions from Motiva's wastewater treatment system is presented in Table M-1.

Table M-1 1990 Base Year Uncontrolled VOC Emissions from Motiva's Wastewater Treatment Plant

Unit Description	1990 Base Year Emissions*		
	VOC (TPY)	VOC (TPD)	Non-Benzene VOC (TPY)
Oily Water Sewer	6.2	0.017	5.0
CPI Separator	7.3	0.020	5.8
API Separator	563.0	1.542	562.5
Equalization Tanks	115.9	0.318	114.5
Spill Diversion Tank	75.0	0.205	75.0
Dissolved Air Flotation	81.0	0.222	80.0
Total	848.4	2.324	842.8

* Notes: (1) VOC emissions from oily water sewer was omitted in 1990 Base Year Inventory due to its small emission rate. (2) Total VOC emission in 1990 Base Year Inventory is 2.313 TPD. The small discrepancy herein resulted from rounding error and including the oily water sewer.

2. VOC Emission Reductions from Individual Units

Motiva Enterprises has provided information about the effect of the planned modifications and controls on VOC emissions for each unit. Such information has been used to project VOC emissions from the wastewater treatment system in the future milestone years. Details of VOC emission projections in 1999 are discussed in this section.

(1) Oily Water Sewer

Per the Benzene Waste Rule, hydrocarbon removal with carbon canisters must be 95 percent effective. Therefore, VOC emissions after modifications to the oily water sewer can be estimated using the 1990 emission in Table M-1 and a 95% control efficiency, which gives

$$(0.017 \text{ TPD}) \times (1 - 95\%) = 0.001 \text{ TPD}$$

(2) CPI Separator

Per the Benzene Waste Rule, hydrocarbon removal with carbon canisters must be 95 percent effective. Therefore, VOC emissions after modifications to the CPI Separator can be estimated using the 1990 emission in Table M-1 and a 95% control efficiency as follows

$$\text{TPD} \times (1 - 95\%) = 0.001 \text{ TPD}$$

(3) API Separator

The emissions from the API Separator will be controlled by both covering the unit and venting emissions to a carbon absorption canister. Motiva has estimated the amount of VOC emissions that will be vented to the carbon absorption canister from the covered API Separator by using AP-42 methodology for determining breathing losses from the fixed-roof tanks. This emission rate is 61.7 TPY which is equal to a daily rate of 0.169 TPD. These emissions will be sent to a carbon absorption canister which must have a control efficiency of 95% per the Benzene Waste Rule. Therefore, the emissions to the atmosphere after the installation of controls on the API Separator can be determined as

$$(0.169 \text{ TPD}) \times (1.00 - 95\%) = 0.008 \text{ TPD}$$

Therefore, the amount of VOC that is captured by the carbon absorption canister is

$$0.169 \text{ TPD} - 0.008 \text{ TPD} = 0.161 \text{ TPD}$$

The reduction in VOC emissions from the API Separator is due not only to the carbon absorption device, but also to the fact that the covers on the API Separator keep more volatile organic compounds in the liquid phase rather than vaporizing to the atmosphere. Therefore, a higher volume of VOCs in the liquid phase will go to downstream units in the wastewater treatment plant. Because they may eventually be emitted to the atmosphere from a downstream unit, these VOCs must be accounted for when determining overall emissions from the wastewater treatment plant. The additional amount of VOCs in the liquid phase that will go to the downstream units is determined as follows.

First, the decrease in VOC emissions due to the new controls is determined by subtracting the controlled emissions from the uncontrolled emissions. The controlled

emissions have been previously calculated to be 0.008 TPD. The uncontrolled emissions are 1.542 TPD (Table M-1). Therefore, the total decrease in VOC emissions is

$$(1.542 \text{ TPD})_{\text{uncontrolled}} - (0.008 \text{ TPD})_{\text{controlled}} = 1.534 \text{ TPD}$$

The vapor portion of the 1.534 TPD decrease is the amount of VOC that will be removed by the carbon absorption canister. This amount has been previously calculated to be 0.161 TPD. The portion of the total VOC reduction that remains in the liquid phase is the difference between the total VOC reduction and the vapor portion that is removed by the carbon absorption canister, which is

$$1.534 \text{ TPD} - 0.161 \text{ TPD} = 1.373 \text{ TPD remaining in liquid phase}$$

According to Motiva Enterprises, 55 percent of the 1.373 TPD, or 0.755 TPD, will be removed in the API Separator and will go to the Coker. Therefore, the amount of VOCs that will remain in the liquid phase and go to downstream units is

$$1.373 \text{ TPD} - 0.755 \text{ TPD} = 0.618 \text{ TPD}$$

(4) Equalization Tanks

Based on AP-42 methodology, the emissions from the equalization tanks after installation of floating roofs will essentially be zero. Therefore, the decrease in VOC emissions from these tanks is equal to the 0.318 TPD as listed in Table M-1. The floating roofs on the equalization tanks will cause an increase in liquid VOCs to downstream units similar to the increase caused by the API Separator covers. The amount of VOCs from the equalization tanks that will remain in the liquid phase is equal to the emission reduction of 0.318 TPD. Therefore, the net increase in VOCs to downstream units is the sum of the 0.618 TPD liquid VOCs previously calculated from the API Separator covers and the 0.318 TPD liquid VOCs resulting from the floating roofs on the equalization tanks. Thus, the total increase is $0.618 + 0.318 = 0.936$ TPD liquid phase VOCs that will go to the Dissolved Air Floatation Unit.

(5) Spill Diversion Tank

The VOC emissions from the spill diversion tank will essentially be zero after installation of the floating roof. The uncontrolled VOC emissions of 75 TPY (or 0.205 TPD) from the spill diversion tank (Table M-1) are the result of maintaining an oil layer on the top of the tank to control odor. This practice will no longer be necessary after installation of the floating roof, thus, the VOC emissions of 0.205 TPD from the spill diversion tank will be totally eliminated from the process. Consequently, there will be no increase in VOC loading on any downstream units from the Spill Diversion Tank.

A portion of the emission reduction from the spill diversion tank will be used to offset VOC emissions from a new Ether Project at Motiva Enterprises facility. This portion of the emission reduction is not creditable for meeting the Rate-of-Progress requirements. The Ether Project is expected to produce a VOC emission of 66.5 TPY, which is equal to a daily emission of 0.182 TPD. A 1:1 offset of the 0.182 TPD is needed from the VOC reduction at the spill diversion tank. Therefore, a controlled emission of 0.182 TPD is attributed to the spill diversion tank. In this manner, the amount of emission reductions to be credited to the 1999 RPP from the spill diversion tank will exclude the amount of reduction needed to offset the Ether Project, which gives

$$\text{Creditable Reduction for 1999 RPP} = 0.205 - 0.182 = 0.023 \text{ TPD}$$

(6) Dissolved Air Floatation (DAF) Unit

The VOC emissions from the DAF unit will be controlled by both covering the unit and venting emissions to a control device. Per the Benzene Waste Rule, the control device must have a 95% VOC removal efficiency. Based on design data, Motiva Enterprises have estimated the emissions that will be vented to the control device from the covered DAF unit to be 4.8 TPY, which is equal to a daily emission of 0.013 TPD. The emissions to the atmosphere from the control device are then determined to be

$$(0.013 \text{ TPD}) \times (1.00 - 95\%) = 0.001 \text{ TPD}$$

The amount of VOC that will be removed by the control device is

$$0.013 \text{ TPD} - 0.001 \text{ TPD} = 0.012 \text{ TPD}$$

The covers on the DAF unit will cause an increase in liquid phase VOCs to downstream units similar to the increase caused by the API Separator and the equalization tanks. Similarly, the decrease in VOC emissions due to the new controls is determined by subtracting the controlled emissions from the uncontrolled emissions. The controlled emissions have been previously estimated to be 0.001 TPD, while the uncontrolled emissions are 0.222 TPD, as listed in Table M-1. Therefore, the total decrease in VOC emissions from the DAF unit is

$$0.222 \text{ TPD} - 0.001 \text{ TPD} = 0.221 \text{ TPD}$$

The vapor portion of the 0.221 TPD reduction is the amount of VOC that is removed by the control device. This amount has been previously calculated to be 0.012 TPD. The portion of the total VOC reduction that remains in the liquid phase is the difference between the total VOC

reduction and the vapor portion, that is

$$0.221 \text{ TPD} - 0.012 \text{ TPD} = 0.209 \text{ TPD}$$

This amount is added to the previously calculated 0.936 TPD liquid phase VOCs, which comes to the DAF unit from the API Separators and the equalization tanks, resulting in a cumulative increase in liquid phase VOCs of 1.145 TPD. According to Motiva Enterprises, 80 percent of this 1.145 TPD, or 0.916 TPD, will be removed in the DAF unit and will go to the Coker. Therefore, the amount of liquid phase VOCs that will go to downstream units is

$$1.145 \text{ TPD} - 0.916 \text{ TPD} = 0.229 \text{ TPD}$$

Of the 0.229 TPD liquid phase VOCs going downstream from the DAF unit, Motiva Enterprises state that 50% will be bio-degraded in the first stage aeration unit. The remainder will be emitted to the atmosphere. Therefore, the net increase in VOC emissions to the atmosphere due to downstream loading from all units is

$$(0.229 \text{ TPD}) \times (0.50) = 0.115 \text{ TPD to the atmosphere}$$

A summary of VOC emissions from individual units at Motiva's wastewater treatment plant after implementing the planned modifications and controls is presented in Table M-2.

Table M-2
Summary of VOC Emissions at Motiva's Wastewater Treatment Plant

Source Unit	Controlled VOC Emissions (TPD)
Oily Water Sewer	0.001
CPI Separator	0.001
API Separator	0.008
Equalization Tanks	0.000
Spill Diversion Tank	0.182*
Dissolved Air Floatation Unit	0.001
Downstream Loading	0.115
Total Emission	0.308

*For offsetting VOC emissions from the ether project.

3. 1999 Control Strategy Projections and Emission Reductions

The 1999 Control Strategy Projection for the Motiva Enterprises wastewater treatment plant can be calculated using an overall control efficiency which accounts for VOC emission reductions from all process modifications and controls at the treatment plant. This 1999 Overall Control Efficiency (CE₁₉₉₉) can be determined using the 1990 uncontrolled emissions from Table M-1 and the estimated

controlled emissions from Table M-2, which gives

$$CE_{1999} = \frac{2.324 - 0.308}{2.324} \times 100\% = 86.8\%$$

The VOC emissions from Motiva's wastewater treatment plant are projected to 1999 using projection Equation P-3 as presented in the 1999 RPP (page 3-10). The parameters needed for the projection are

1990 Actual Emissions	= 2.324 TPD (From Table M-1)
1999 Overall Control Efficiency	= 86.8% = 0.868 (Calculated above)
1999 Rule Effectiveness	= 80% = 0.80 (Default value)
1990 Control Efficiency	= 0% = 0 (No controls in 1990)
1990 Rule Effectiveness	= 100% = 1 (No rule effect in 1990)
1999 Growth Factor	= 1.08 (Page 2-9, 1999 RPP)

The 1999 control strategy projection of VOC emissions is

$$EMIS_{1999} = \frac{2.324 \times 1 - 86.8\% \times 80\% \times 1.08}{1 - 0\% \times 100\%} = 0.767 \text{ TPD}$$

The VOC emission reduction at Motiva's wastewater treatment plant due to process modifications and new controls is the difference between the 1999 Current Control Projection emissions and the 1999 Control Strategy Projection emissions. The 1999 Current Control Projection emissions can be obtained using Equation P-6 (page 3-12, 1999 RPP), that is, multiplying the 1990 Base Year Emissions with the 1999 growth factor

$$EMIS_{1999} - \text{Current Control} = 2.324 \times 1.08 = 2.510 \text{ TPD}$$

Therefore, the VOC emission reduction in 1999 (ER₁₉₉₉) from Motiva's wastewater treatment plant is expected to be

$$ER_{1999} = 2.510 \text{ TPD} - 0.767 \text{ TPD} = 1.743 \text{ TPD}$$

4. Emission Reduction Credit for 1999 Rate-of-Progress Plan

The VOC emission reductions at Motiva's wastewater treatment plant resulted from process modifications and controls planned by Motiva to comply with either the Federal Benzene Waste Rule or Delaware Air Regulation 24.28 for petroleum refinery. In July 1992, DNREC acknowledged the total VOC emission reduction of 75 TPY from the spill diversion tank to offset VOC emissions from Motiva's then-planned ether project (DNREC Secretary's Order No. 92-0044, July 14, 1992). Since Motiva estimated that the ether project would lead to a VOC emission increase

of 66.5 TPY, a portion of the acknowledged VOC emission reduction, that is, $75 - 66.5 = 8.5$ TPY, is included in the total emission reductions estimated in Section 3. Delaware decides (1) not to use this 8.5 TPY acknowledged reduction in its 1999 RPP for reduction credit, and (2) to exploit alternative reductions (e.g., NO_x emission reductions) to fulfill the emission reduction requirements in the 1999 RPP. This decision reflects DNREC's consideration to follow the Final Order and Decision, issued by the Environmental Appeals Board, the State of Delaware, on November 20, 1998 (Attachment 2).

The 8.5 TPY VOC reduction is estimated with respect to the 1990 base year. It cannot be simply subtracted from the 1999 total VOC emission reductions projected previously in Section 3. Instead, similar steps used in Section 3 should be applied to the source that produces this reduction, namely, the spill diversion tank. Delaware makes the following analysis to determine the 1999 VOC emission reduction resulting from this 8.5 TPY.

The 1990 base year VOC emission from Motiva's wastewater treatment plant (EMIS₁₉₉₀) can be expressed as

$$EMIS_{1990} = EMIS_{1990CRED} + EMIS_{1990NONCR} \quad (1)$$

where EMIS_{1990CRED} is the emissions from which reduction credits will be taken in 1999, and EMIS_{1990NONCR} is the emissions from which the reductions will not be taken as credit in 1999. The 1999 current control projection is

$$EMIS_{CC1999} = EMIS_{1990} \times GF = EMIS_{1990CRED} \times GF + EMIS_{1990NONCR} \times GF \quad (2)$$

where GF is the growth factor. The first part of Eq. 2 is the credit portion and the second part is the non-credit portion. The 1999 control strategy projection is

$$EMIS_{CS1999} = EMIS_{1990CRED} \times GF \times (1 - CE_{CRED}\% \times RE\%) + EMIS_{1990NONCR} \times GF \times (1 - CE_{NONCR}\% \times RE\%) \quad (3)$$

where CE_{CRED}% is the control efficiency of the credited sources and CE_{NONCR}% is the control efficiency for the non-credited sources. Again, the first part of Eq. 3 is the credit portion and the second part is the non-credit portion. The emission reduction in 1999 (ER₁₉₉₉) is

$$ER_{1999} = EMIS_{CC1999} - EMIS_{CS1999} = ER_{1999CRED} + ER_{1999NONCR} = EMIS_{1990CRED} \times GF - EMIS_{1990CRED} \times GF \times (1 - CE_{CRED}\% \times RE\%) + EMIS_{1990NONCR} \times GF - EMIS_{1990NONCR} \times GF \times (1 - CE_{NONCR}\% \times RE\%) \quad (4)$$

The emission reduction from the credit sources is

$$\begin{aligned} ER_{1999CRED} &= EMIS_{CC1999CRED} \\ &= EMIS_{CS1999CRED} = EMIS_{1990CRED} \times GF - \\ &EMIS_{1990CRED} \times GF \times (1 - CE_{CRED}\% \times RE\%) \end{aligned} \quad (5)$$

The emission reduction from the non-credit sources is

$$\begin{aligned} ER_{1999NONCR} &= EMIS_{CC1999NONCR} \\ &= EMIS_{CS1999NONCR} = EMIS_{1990NONCR} \times \\ &GF - EMIS_{1990NONCR} \times GF \times (1 - CE_{NONCR}\% \times RE\%) \end{aligned} \quad (6)$$

For credit sources, the total 1990 emission can be obtained from Table M-1 minus 8.5 TPY, that is, $848.4 - 8.5 = 839.9$ TPY, or 2.301 TPD. The controlled emission from these sources has been calculated previously in Table M-2. Thus, the control efficiency for the credit sources is

$$CE_{1999CRED} = \frac{2.301 - 0.308}{2.301} \times 100\% = 86.6\% \quad (7)$$

Applying Eq. 5 and assuming an 80% rule effectiveness, the emission reduction credit can be calculated as

$$\begin{aligned} ER_{1999CRED} &= EMIS_{CC1999CRED} - EMIS_{CS1999CRED} \\ &= 2.301 \times 1.08 - 2.301 \times 1.08 \times \\ &(1 - 86.6\% \times 80\%) \\ &= 2.485 - 0.763 = 1.722 \text{ TPD} \end{aligned}$$

For the non-credit source, the 1990 emission is 8.5 TPY, or 0.023 TPD. The controlled emission for this source is 0.000 TPD (emission from the spill diversion tank after installation of floating roof). Thus, the control efficiency for the non-credit source is

$$CE_{1999NONCR} = \frac{0.023 - 0.00}{0.023} \times 100\% = 100\% \quad (8)$$

Applying Eq. 6 and assuming an 80% rule effectiveness, the emission reduction from the non-credit source can be calculated as

$$ER_{1999NONCR} = 0.023 \times 1.08 - 0.023 \times 1.08 \times (1 - 100\% \times 80\%) = 0.020 \text{ TPD}$$

As mentioned previously, Delaware decides not to take this reduction as credit in its 1999 RPP. Therefore, the emission reduction credit for Delaware's 1999 RPP is only 1.722 TPD as calculated above.

Attachment 1 to Appendix M (Amended)

(A hardcopy of this attachment is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

Letter from Motiva's Plant Manager, R.G. Soehlke, to R. Taggart, Program Manager, Engineering and Compliance Section of DNREC, dated on March 6, 1992, and the documentation attached to this letter, entitled "Summary of VOC Emission Effect Resulting from Compliance with the Benzene Waste Rule on the Waste Water Treatment Plant".

Attachment 2 to Appendix M (Amended)

(A hardcopy of this attachment is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

Final Order and Decision, the Environmental Appeals Board, the State of Delaware, November 20, 1998.

Appendix P

Mobile 5a Input and Output Files for Stage Ii Vapor Recovery Program With Annual Inspections

(A hardcopy of this appendix is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 1902(a)(5) (7 **Del.C.** 1902(a)(5))

Register Notice

1. Title of The Regulation:

Shellfish Regulations No. S-23 Lobster-pot Design; No. S-25 Lobster-Pot, Season and Limits for Commercial Lobster Pot License and S-26, Possession of V-notched Lobsters Prohibited.

2. Brief Synopsis of The Subject, Substance And Issues:

In order to comply with the requirements of Amendment 3 to the Interstate Fishery Management Plan for American Lobster, new lobster pot design criteria are

required to allow the escape of undersized lobsters, to allow any lobster to escape if a pot is lost and limit the size of pots. Mature female lobsters are marked and released by fishermen in New England when they are carrying eggs. The possession of these marked females with a V-notch in one of their tail flippers is prohibited in order to protect known mature female lobsters. It is also required that landing limits be implemented to prohibit the landing of more than 100 lobsters per one day trip or up to 500 per 5 day trip that are not taken by pots in the Exclusive Economic Zone (3-200 nautical miles in the Ocean).

3. Possible Terms of The Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

§1902 (a)(5), 7 Del. C.

5. Other Regulations That May Be Affected by The Proposal:

None

6. Notice of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302) 739-3441, prior to 4:30 PM on Friday, March 5, 1999. A public hearing on these proposed amendments to Shellfish Regulation Nos. 23 and 25 and new Shellfish Regulation No.26 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday February 25, 1999.

7. Prepared by:

Charles A. Lesser(302)-739-3441January 11, 1999

Proposed amendments to Shellfish Regulation
No. S-23, LOBSTER-POT DESIGN.

Section 1. Amend Shellfish Regulation No. S-23, LOBSTER-POT DESIGN in subsection (a) by striking the words "one (1) ¾" x 6'" and substitute in lieu there of the words "1 15/16 inches by 5 ¾ inches."

Further amend Shellfish Regulation No. S-23, LOBSTER-POT DESIGN by adding a new subsection (b) to read as follows:

"(b) It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, in the waters under the jurisdiction of this State that does

not contain a ghost panel covering an opening that measures at least 3 3/4 inches by 3 3/4 inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobster after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap."

Further amend Shellfish Regulation No. S-23, LOBSTER-POT DESIGN by adding a new subsection (c) to read as follows:

"(c) It shall be unlawful for any recreational or commercial lobster pot fisherman to possess a lobster pot or trap with a volume larger than 22,950 cubic inches."

Section 2. EFFECTIVE DATE

These amendments to Shellfish Regulation No. S-23 shall become effective 30 days from the date the Order adopting these amendments is issued by the Secretary of the Department of Natural Resources and Environmental Control.

SHELLFISH REGULATION NO. S-23

S-23 LOBSTER-POT DESIGN

(a) It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than ~~one (1) 3/4" x 6"~~ 1 15/16 inches by 5 3/4 inches located in the parlor section of each pot or trap.

"(b) It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, in the waters under the jurisdiction of this State that does not contain a ghost panel covering an opening that measures at least 3 3/4 inches by 3 3/4 inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobster after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16

inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap."

"(c) It shall be unlawful for any recreational or commercial lobster pot fisherman to possess a lobster pot or trap with a volume larger than 22,950 cubic inches."

Proposed amendment to Shellfish Regulation No. S-25, LOBSTER-POT, SEASON AND LIMITS FOR COMMERCIAL LOBSTER POT LICENSE.

Section 1. Amend Shellfish Regulation No. S-25, LOBSTER-POT SEASON AND LIMITS FOR COMMERCIAL LOBSTER POT LICENSE by adding a new subsection (c) to read as follows:

"(c) It shall be unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip up to a maximum of 500 lobsters per trip for trips 5 days or longer."

Section 2. EFFECTIVE DATE.

This amendment to Shellfish Regulation No. S-25 shall become effective 30 days from the date the Order adopting this amendment is issued by the Secretary of the Department of Natural Resources and Environmental Control.

SHELLFISH REGULATION S-25

S-25 LOBSTERS-POT, SEASON AND LIMITS FOR COMMERCIAL LOBSTER POT LICENSE

(a) It shall be lawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State at any time as permitted by law on any date except Sunday.

(b) It shall be unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State at any time as permitted by law on any date except Sunday.

"(c) It shall be unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or longer."

Proposed Shellfish Regulation to prohibit the possession of V-notched lobsters.

Section 1. Add a new Shellfish Regulation No. S-26 to read as follows:

“S-26 POSSESSION OF V-NOTCHED LOBSTERS PROHIBITED

It shall be unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut without setal hairs at least ¼ inch in depth and tapering to a sharp point, in the flipper next to the right of center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.”

Section 2. EFFECTIVE DATE

This Shellfish Regulation No. S-26 shall become effective 30 days from the date the Order adopting this regulation is issued by the Secretary of the Department of Natural Resources and Environmental Control.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 **Del.C.** 903(e)(2)(a))

Register Notice

1. Title of The Regulation:

Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Season.

2. Brief Synopsis of The Subject, Substance And Issues:

In order to remain in compliance in 1999 with the Summer Flounder Fishery Management Plan, as amended, Delaware must reduce its recreational fishery harvest by 40% of the 1997 recreational harvest. There are several ways to accomplish this reduction. If Delaware retains the 15 inch minimum size limit and 8 fish creel limit for summer flounder, a seasonal closure is required. There are four options for a closed season. If Delaware raises its minimum size limit to 16 inches and retains the 8 fish creel limit, a much shorter closed season is required. Lowering the creel limit will have a minimal effect on reducing the harvest.

The Division of Fish and Wildlife’s preferred option is to retain the 15 inch minimum size limit and 8 fish creel limit and close the recreational and commercial hook and line season on January 1 through May 28 and again on

September 12 through December 31. Other seasonal closure options that are the conservation equivalent of the preferred option are January 1 through July 13; August 9 through December 31 or July 15 through August 8.

Delaware’s commercial hook and line fishery for summer flounder will continue to have the same minimum size limit, creel limit and seasonal closure(s) as the recreational fishery in order to keep commercial landings of summer flounder below Delaware’s commercial quota of 11,100 pounds.

3. Possible Terms of The Agency Action:

Requirements in the Summer Flounder Fishery Management Plan require changes to reduce recreational harvest by 40% of the 1997 landings. If Delaware does not comply, the summer flounder fishery may be closed.

4. Statutory Basis or Legal Authority to Act:

§903 (e)(2)(a), 7 Del. C.

5. Other Regulations That May Be Affected by The Proposal:

None

6. Notice of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302)-739-3441 prior to 4:30 PM on Friday, March 5, 1999. A public hearing on proposed amendments to TIDAL FINFISH REGULATION NO. 4 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday, February 25, 1999.

7. Prepared by:

Charles A. Lesser(302)-739-3441 January 15, 1999

Proposed Amendment to Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Seasons.

Section 1. Amend Tidal Finfish Regulation No. 4, Summer Flounder Size Limits; Possession Limits; Seasons by adding a new subsection to read as follows:

“(k)It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession any summer flounder or to land any summer flounder during the periods beginning at 12:01 AM on January 1 and ending at midnight on May 28 and beginning at 12:01 AM on September 12 and ending at midnight on December 31. To land shall mean to bring on shore.”

Section 2. Effective Date

This amendment to Tidal Finfish Regulation No. 4 shall become effective 30 days from the date the Order adopting this amendment is issued by the Secretary of the Department of Natural Resources and Environmental Control.

Tidal Finfish Regulation No. 4

Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Seasons.

a) It shall be lawful for any person to take and reduce to possession summer flounder from the tidal waters of this State at any time except as otherwise set forth in this regulation.

b) It shall be unlawful for any recreational fisherman to have in possession more than eight (8) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than fifteen (15) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, other than a licensed commercial fisherman with a gill net permit, while on board a vessel, to have in possession any part of a summer flounder that measures less than fifteen (15) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) It shall be unlawful for any licensed commercial finfisherman with a gill net permit to have in possession any part of a summer flounder that measures less than fourteen (14) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Notwithstanding the size limits in this regulation, a

person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail, provided said person has one of the following:

1) A valid commercial finfishing license and gill net permit issued by the Department; or

2) A valid vessel permit issued by the Regional director, NMFS, to fish for and retain summer flounder in the EEZ or a dealer permit issued by the Regional Director or NMFS, as set forth in 50CFR, Part 625.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than eight (8) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

k) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession any summer flounder or to land any summer flounder during the periods beginning at 12:01 AM on January 1 and ending at midnight on May 28 and beginning at 12:01 AM on September 12 and ending at midnight on December 31. To land shall mean to bring on shore.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 Del.C. 903(e)(2)(a))

Register Notice

1. Title of the Regulation:
Tidal Finfish Regulation No. 23 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas.

2. Brief Synopsis of The Subject, Substance And Issues:
The fishing mortality rate on the black sea bass is under the target level described in the Black Sea Bass Fishery

Management Plan. Therefore the recreational seasonal closure is no longer needed. The current seasonal closure of August 1 – August 15 for recreational fishermen will be dropped.

3. Possible Terms of The Agency Action:

States must comply with the minimum requirements of the Black Sea Bass Fishery Management Plan or face a closure of the fishery.

4. Statutory Basis or Legal Authority to Act:

§ 903 (e)(2)(a), 7 Del. C.

5. Other Regulations That May Be Affected by The Proposal:

None

6. Notice of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302) 739-3441, prior to 4:30 PM on Friday, March 5, 1999. A public hearing on proposed amendments to TIDAL FINFISH REGULATION NO. 23 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday, February 25, 1999.

7. Prepared by:

Charles A. Lesser (302)739-3441 January 11, 1999

Proposed Amendment to Tidal Finfish Regulation No. 23
Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas

Section 1.

Amend Tidal Finfish Regulation No. 23 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas by striking subsection (b) in its entirety.

Section 2. Effective Date

These amendments to Tidal Finfish Regulation No. 23 shall become effective 30 days from the date the Order adopting these amendments is issued by the Secretary of the Department of Natural Resources and Environmental Control.

Tidal Finfish Regulation No. 23

Tidal Finfish Regulation No. 23 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass Centropritis striata that measures less than ten (10) inches, total length.

b) It shall be unlawful for any recreational fisherman

to take and reduce to possession any black sea bass or to land any black sea bass during the period beginning at 12:01 a.m. on August 1 and ending at midnight on August 15.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than on the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) – 11,000 lbs.

Second Quarter (April, May and June) – 7,000 lbs.

Third Quarter (July, August and September) – 3,000 lbs.

Fourth Quarter (October, November and December) – 4,000 lbs.

“One trip” shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.”

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter indicated in subsection (c) after the date in said quarter that the National Marine Fisheries Services determines that quarter’s quota is filled.”

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY & BARBERING**
Statutory Authority: 24 Delaware Code,
Section 5106 (24 **Del.C.** 5106)

BEFORE THE BOARD OF COSMETOLOGY AND
BARBERING OF THE STATE OF DELAWARE

IN RE: |
ADOPTION OF RULES AND |
REGULATIONS |

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 25th day of January, 1999, in accordance with 29 **Del.C.** 10118 and for the reasons stated hereinafter, the Board of Cosmetology and Barbering ('the Board') enters this Order adopting Rules and Regulations.

Nature of the Proceedings

The Board proposes to add provisions to one of its existing rules and to adopt three new regulations to supplement its existing rules. Notice of the public hearing on the Board's proposal was published in the Delaware

Register of Regulations on October 1, 1998 and in two Delaware newspapers of general circulation, all in accord with 29 Del.C. 10115. (An affidavit from personnel of the News Journal confirming such publication and a copy of the notice that appeared in The Delaware State News were received into evidence at the public hearing.) The public hearing was held as noticed on October 26, 1998. The Board continued accepting comments on the proposed additions through October 30, 1998. The Board deliberated on the public comments at its November 30, 1998 meeting. This is the Board's Decision and Order ADOPTING the regulations as proposed.

Evidence and Information Submitted at the Public Hearing

The Board received two written comments into evidence at the public hearing: (1) a summary of a survey conducted by the Maryland cosmetology board identifying the positions of twenty different state cosmetology boards on the use of electric nail drills and the use of laser technology; and (2) a summary from the American Electrology Association of the position of various state medical licensing boards on the use of lasers for hair removal.

Findings of Fact and Conclusions

The public was given appropriate notice of the Board's intention to revise and add to its Rules and Regulations and had an adequate opportunity to provide the Board with

comments on the proposed changes. The Board further concludes that its consideration of the proposed Rules and Regulations is within the Board's authority under 24 DeIC. 5106(1).

The first change proposed by the Board is to add provisions to current Rule 12.¹ The additions establish time frames in which apprentice hours must be completed and allow the Board to extend the time frames when an applicant demonstrates good cause for exception. The Board believes that by setting both minimum and maximum time frames, the proposed rule assures that the apprentice hours will be concentrated enough to be an effective learning experience, yet not so rushed as to be cursory. The Board notes that the time parameters are tailored to the type of apprenticeship and finds that the provision for good cause exceptions will allow the Board to mitigate any unintended and unnecessarily harsh effect the rules may have in individual cases.

Proposed Rule 14 makes licensees and registrants of the Board responsible for assuring that their employees are appropriately licensed in Delaware and subjects them to disciplinary action by the Board for failing to do so. The Board finds that this rule advances the statutory prohibition on unlicensed practice² and is consistent with the standards of conduct expected of licensed professionals.

Proposed Rule 15 outlines the documentation that an applicant for licensure must provide the Board. It also specifically requires that applicants who have received their education and training from non-domestic programs must provide the Board with translated documents, if necessary, and with an evaluation from an educational credential evaluation agency showing that his or her training and experience are equivalent to the statutory requirements for licensure. The Board believes that this rule is necessary to put applicants on notice of the type of documentation the Board requires and to bring conformity to the large numbers of applications the Board reviews. The requirement of educational credential evaluations is necessary to help the Board fairly and consistently assess the qualifications of applicants trained in other countries, where the educational process is often organized differently.

Finally, proposed Rule 16 adopts National Interstate Council standards for infection control, adopts the health and safety regulations developed by the Division of Public Health, limits the use of electric files to artificial nails and prohibits the use of laser technology for hair removal. The rule also makes violating any of these standards a ground for discipline, as a necessary enforcement mechanism for the standards. The Board notes that one of the recommendations from its 1998 "sunset review" was adoption of the NIC standards. More generally, the Board finds that it is essential to establish health and safety standards in a profession that provides personal services, often using potentially dangerous tools and chemicals.

Likewise, the Board finds that the use of electric nail files and drills on natural nails creates an unreasonable and unnecessary risk of injury to clients and therefore, their use should be limited to artificial nails. In this regard, the Board notes that the information submitted by Maryland's licensing agency suggests that several other states have already imposed restrictions on the use of electric nail equipment, or are considering doing so. While the Board does not consider the Maryland summary dispositive, it does tend to confirm the existence of a public safety issue.

The prohibition on using lasers for hair removal flows from the Board's conclusion that such services not work generally performed by cosmetologists. The Board finds that the possible harm from the use of lasers is serious and the risk of allowing licensees to perform this type of hair removal for cosmetic purposes is unwarranted. In this regard, the Board notes the submission of the American Electrology Association, suggesting that the medical licensing boards of at least twenty states have limited the use of laser for hair removal to physicians or personnel working under the supervision of a doctor.

In summary, the Board concludes that the proposed additions to its Rules and Regulations are necessary for the enforcement of Chapter 51 of Title 24 of The Delaware Code and for the full effective and fair performance of the Boards duties under that chapter. The Board also finds that adopting the regulations as proposed is in the best interests of the citizens of the State of Delaware and is necessary to protect the general public and to regulate and oversee the practices of cosmetology, barbering and affiliated professions. The Board, therefore, adopts the proposed additions to existing Rule 12 and new Rules 14, 15 and 16 as set forth in Exhibit "A" attached hereto.

ORDER

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Cosmetology and Barbering, IT IS HEREBY ORDERED THAT:

1. Proposed Rules and Regulations 14, 15 and 16, and the additions to existing Rule 12, are approved and adopted in the exact text attached hereto as Exhibit "A."
2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware-Register of Regulations, pursuant to 29 DeIC. 10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary and proper.

¹ As part of this rule-making process the format and numbering style of the Rules and Regulations have also been updated 29 DeIC 10113(4) allows the Board to informally adopt these nonsubstantive changes in style and form and the

Board has done so in an effort to make the Rules easier to use and consistent with the style of other agency regulations. This Order refers to the new numbering style.

² See 24 Del C 5103.

***Please note that no changes were made to the regulation as originally proposed and published in the October 1998 issue of the Register at page 440 (2:4 Del.R. 440). Therefore, the final regulation is not being republished. Please refer to the October 1998 issue of the Register or contact the Division of Professional Regulation, Board of Cosmetology and Barbering.**

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code,
Section 1237 (3 Del.C. 1237)

On November, 23, 1998, the **Pesticide Section of the Delaware Department of Agriculture** held a public meeting to hear comments on the proposed amendments to the Delaware pesticide Rules and Regulations. We accepted written comments until December 23, 1998.

After a brief review of the amendments comments were accepted. Comments were received from twelve (12) members of the regulated community and one (1) member of the University of Delaware Cooperative Extension service. Each of the twelve members of the regulated community stated that they were in favor of the amendments as written. The representative from the University of Delaware Cooperative Extension Service (education) spoke in favor of the amendments as written. A question was raised concerning the availability of training for recertification. The Delaware Pest Control Association and University of Delaware Cooperative Extension Service have stated that they will be increasing the number of programs that they provide which will add to the current training programs available. In addition to the increased training that is proposed, the Agricultural Specialist stated that based upon programs that have been approved over the past three years training is currently available to meet the increased training requirement.

There were no written comments received on the proposed changes.

Based upon the comments received the Delaware Department of Agriculture, Pesticide Section will adopt these proposed amendments with the Order attached.

Amendments to the Rules and Regulations of the Delaware Pesticide Law

In accordance with the authority vested in the State of Delaware, Department of Agriculture, to establish rules and

procedures for the enforcement of the Delaware Pesticide Law, 3 DelC., Chapter 12, the amendments to the Delaware Pesticide Rules and Regulations, as printed in 2:5 Del.R. 724-740 (November 1, 1998), are promulgated. The effective date of these amendments shall be February 10, 1999.

Date 5 January 1999
John F. Tarburton
Secretary of Agriculture

***Please note that no changes were made to the regulation as originally proposed and published in the November 1998 issue of the Register at page 724 (2:5 Del.R. 724). Therefore, the final regulation is not being republished. Please refer to the November 1998 issue of the Register or contact the Department of Agriculture.**

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF DELAWARE
REGULATORY IMPLEMENTING ORDER

SCHOOL CONSTRUCTION

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to amend the regulations on School Construction. These regulations are found in the School Construction Manual, May 1991. The School Construction Manual is a combination of technical assistance, Department of Education Regulations and sections of the Delaware Code, particularly Title 14, Chapter 20, Standard School Construction and Title 29, Chapter 75, School Construction Capital Improvements. The purpose of the amendments is to isolate the regulatory sections from the technical assistance and the Del. C. citations. Three main regulations have been identified. They include Major Capital Improvement Programs, Minor Capital Improvement Programs and Satellite Schools. These regulations define the process and procedures that local school districts must follow for Major and Minor Capital Improvement Projects and when opening a satellite school.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 11, 1998 in the form hereto attached as Exhibit A. The

notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend these regulations in order to clarify their content and to put them into regulatory form.

III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled the Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, on January 21, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 21st day of January, 1999.
DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 21st day of January, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

EXHIBIT B

400.2 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects in excess of \$250,000.

2.0 Procedures for Approval of a Site for School Construction

2.1 Local school districts shall contact the State Department of Education for a site review when they propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

2.2 The Department of Education will forward all prospective sites to the following agencies for their review and comments. The Department of Education will consolidate the responses of the other agencies in order to review and rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

2.2.1 State Planning Coordination Office

2.2.2 The Budget Office

2.2.3 The Department of Natural Resources and Environmental Control

2.2.4 The Department of Agriculture

2.2.5 The Department of Transportation

2.2.6 The Local Planning Agency having jurisdiction

3.0 Educational Specifications, Schematic Plans, Preliminary Plans, and Final Plan Approvals

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the State Department of Education. The State Department will require ten working days for completion of the review and approval process.

3.2 All Schematic Plans shall be approved by the local school board and the Department of Education and these approved plans should be sent to the county or city planning office for information purposes only.

3.3 All Preliminary Plans shall be approved by the local school board and the State Department of Education.

3.4 All final plans shall be approved by the local school board and the State Department of Education.

3.5 The Local School District must involve the following groups in reviewing these plans prior to the final approval.

3.5.1 Fire Marshal to review the plans for fire safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

4.0 Certificates of Necessity

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district.

5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

5.1 The school district shall submit to the State Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the State Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the State Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility.

6.0 Purchase Orders: All purchase orders for any major capital improvement project shall be approved by both the State Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

7.0 Change Orders

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is

to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the State Department of Education.

7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.

8.0 Transfer of funds between Projects

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the State Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project. For example - no more than \$10,000 could be transferred from a \$100,000 project to any other project.

8.1.2 No project may have more than 10% added to its initial funding. For example - no more than \$10,000 would be transferred from all other projects to a project originally budgeted at \$100,000.

9.0 Educational Technology: All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, in the project, wiring for technology that meets the Delaware Center for Educational Technology standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Administration of the New School: The principal of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

400.3 Minor Capital Improvement Program

1.0 The Minor Capital Improvement Program is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory, changing its composition or more frequent maintenance activities. Minor Capital Improvement projects are projects that cost less than \$250,000 unless the project is for roof repair. The three year

program is submitted annually and should be comprised of work necessary for good maintenance practice.

1.1 Minor Capital Improvement projects shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)

1.2 The local school district shall send a copy of the purchase order to the State Department of Education.

1.3 The following areas are authorized for Minor Capital Improvement Project funds: roofs, heating system, ventilation & air conditioning systems, plumbing & water systems, electrical systems, windows, (sashes, frames), doors, floors, ceilings, masonry, structural built-in equipment, painting (fire suppression and life safety), maintenance of site, typewriters and office machines used for instructional purposes only, renovations/alterations/modernization that does not require major structural changes.

1.4 Use of Funds: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for routine janitorial supplies, upkeep of grounds nor any movable equipment. Recurring items such as broken glass and torn window screens, may not be repaired or replaced with these funds.

1.5 Invoices: Invoices may be sent directly to the Division of Accounting for processing after work has been completed and accepted, except for invoices with an adjustment which must be approved by the State Department of Education before transmittal to the Division of Accounting.

2.0 Vocational Equipment Replacement Requests

2.1 Requests for the replacement of vocational equipment may be made under the Minor Capital Improvement Program. Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item.

2.2 Equipment shall be defined as a movable or fixed unit, not built-in, that:

2.2.1 retains its original shape and appearance with use.

2.2.2 is non-expendable, i.e., is not consumed in use.

2.2.3 represents an investment in money which makes it feasible and advisable to capitalize.

2.2.4 does not lose its identity through incorporation into a different or more complex unit.

2.3 The equipment shall meet the following criteria to be replaced:

2.3.1 Item is non-expendable.

2.3.2 Item has a minimum 10-year life expectancy.

2.3.3 Item has a unit cost of \$500 or more.

2.3.4 Item is worn-out or not repairable.

2.3.5 Item is obsolete and five or more years old.

2.3.6 Item was originally purchased with State, State and local, or local funds only.

2.4 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Vocational schools are 100% State funded and all others are funded 60% State and 40% local.

2.5 Purchase Orders: Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three-year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. However, should funds prove insufficient after three years of appropriations, the district must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires will revert to the State.

3.0 Cost Limitations: The maximum cost of a Minor Capital Improvement project is \$250,000 except roof repairs/replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

4.0 Temporary Employees: Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

400.4 Satellite School Agreements

1.0 Satellite school facilities shall be subject to the same health and safety codes required of other public school facilities. Plans and specifications of proposed satellite school facilities shall be submitted for review and approval, as appropriate, to the following agencies by the local district or charter school board:

1.1 Fire Marshal of Appropriate Jurisdiction.

1.2 Architectural Accessibility Board.

1.3 Division of Public Health for food preparation and serving area and swimming pools.

1.4 Department of Natural Resources & Environmental Control, wastewater and erosion control.

1.5 Local Building Officials to provide Certificate of Occupancy or Approval.

1.6 State Risk Manager.

1.7 State Department of Education.

2.0 Documentary evidence of review and approval by the authorities listed as a. through g. shall be provided to the

State Department of Education.

3.0 Upon receipt of the aforementioned documentary evidence, the State Department of Education shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose considering such items as size, adequacy of sanitary facilities, adequacy of lighting and ventilation, etc.

4.0 Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the satellite school. A copy of such certificate or permit shall be provided to the State Department of Education. The satellite school facilities shall be subject to the same periodic inspections for health and safety as other public schools.

5.0 The reorganized school district or charter school shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512(31 Del.C. 512)

BEFORE THE DELAWARE DEPARTMENT OF
HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:

**REVISION OF THE REGULATIONS
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM**

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related outpatient hospital, practitioner, non-emergency medical transportation, private duty nursing community support services, and general policies. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the December 1998 Delaware Register of Regulations, requiring written materials and suggestions

from the public concerning the proposed regulations to be produced by January 1, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 1998 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective February 10, 1999.

Gregg C. Sylvester, M.D. 1/13/99
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the December 1998 issue of the Register at page 836 (2:6 Del.R. 836). Therefore, the final regulation is not being republished. Please refer to the December 1998 issue of the Register or contact the Department of Health and Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. 512)

BEFORE DELAWARE HEALTH AND SOCIAL
SERVICES

IN THE MATTER OF:

**REVISION OF THE REGULATIONS
OF THE A BETTER CHANCE**

NATURE OF THE PROCEEDINGS:

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3024. This change adds categories of non-citizens who are eligible to receive TANF. The Balanced Budget Act of 1997 allowed certain immigrants who were barred from receiving benefits under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

On November 1, 1998, the DHSS published in the Delaware Register of Regulations pages 744-745, its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and

suggestions from the public concerning the proposed regulations be delivered to DHSS by November 30, 1998, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. There were no written or oral comments to the proposed regulation.

FINDINGS OF FACT:

The Department finds that the proposed change, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation of the *A Better Chance* are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

December 14, 1998
 GREGG C. SYLVESTER, MD
 SECRETARY

3024 Citizens and Aliens
 [233.50]

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive public assistance benefits.

Citizens are those persons born in the 50 states and the district of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996,

are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;
3. Asylees, for a period of five years after obtaining such status;
4. Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;
5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and
6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.

Documentation

1. Lawful permanent resident status is verified by:
 - INS Form I-551; or
 - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.
2. Refugee status is verified by:
 - INS Form I-94 annotated with stamp showing admission under section 207 of the INS;
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
 - INS Form I-766 (Employment Authorization Document) annotated "A3"; or
 - INS Form I-571 (Refugee travel Document).
3. Asylee status is verified by:
 - INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
 - INS Form I-766 (Employment Authorization Document) annotated "A5";
 - Grant letter from the Asylum Office of INS; or
 - Order from an immigration judge granting asylum.
4. The status of an alien whose deportation is withheld is verified by:

- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
- INS Form I-766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.

5. Cuban/Haitian entrant status is verified by:

- INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
- An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU^ or CU&;
- INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
- INS Form I-94 showing parole into the United States on or after October 10, 1980; and
- Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality

6. Amerasian immigrant status is verified by:

- INS Form I-551 with the code AM6, AM7, or AM8; or
- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.

7. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call PPDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

NATURE OF THE PROCEEDINGS:

The Delaware Health and Social Services, Division of Social Services, initiated proceedings to create new policy governing Work For Your Welfare guidelines to the Division of Social Services' Manual Sections 3031 through 3031.5, pursuant to the Administrative Procedures Act. The policy changes arose from Delaware's A Better Chance welfare reform initiatives.

On November 1, 1998, the DHSS published in the Delaware Register of Regulations (pages 754-748) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed be delivered by November 30, 1998, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

It was determined that no written materials or suggestions had been received from any individual or the public.

FINDINGS OF FACT:

The Department finds that the proposed changes, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED that the proposed regulations of the Work For Your Welfare program shall become effective ten days after publication of the final regulation in the Delaware Register.

January 12, 1999

GREGG C. SYLVESTER, MD
SECRETARY

***Please note that no changes were made to the regulation as originally proposed and published in the November 1998 issue of the Register at page 745 (2:5 Del.R. 745). Therefore, the final regulation is not being republished. Please refer to the November 1998 issue of the Register or contact the Department of Health and Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512 (31 Del.C. 512)

BEFORE DELAWARE HEALTH AND SOCIAL
SERVICES

IN THE MATTER OF:

NEW WORK FOR YOUR WELFARE
REGULATIONS

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR & WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No. 99-A-0002

Date of Issuance: January 13, 1999

Re: Proposal to Amend Regulations Governing the Control
of Air Pollution Nos. 24 & 38 Relating to Dry Cleaning
Facilities using Perchloroethylene

Effective Date of Regulatory Amendments: June 30, 1999

I. Background

The Department has proposed to amend Regulations No. 38 and 24 of the Delaware *Regulations Governing the Control of Air Pollution* concerning the regulation of dry cleaning facilities in Delaware that use perchloroethylene ("PERC") as a cleaning solvent. These changes will affect facilities state wide, and affect a significant percentage of facilities in New Castle County that are operated by individuals to whom Korean is their first language.

Prior to the public hearings, public workshops concerning the proposed regulatory changes were held in all three counties. Workshops were held on September 22, 1998 (in Newark), September 23, 1998 (in Dover), September 28, 1998 (in Newark) and September 30, 1998 (in Georgetown). The workshop that was held on September 28th in Newark was also translated into Korean.

In all, four public hearings were conducted concerning these regulatory changes. The first hearing was held at the Delaware Technical & Community College, Terry Campus, in Dover, on December 1, 1998, beginning at approximately 7:30 p.m. The second hearing was held at the Delaware Technical & Community College, Stanton Campus in Newark on Wednesday, December 2, 1998, beginning at approximately 7:30 p.m. The third hearing was held at the Delaware Technical & Community College, Owens Campus, in Georgetown on Thursday, December 3, 1998 beginning at approximately 7:50 p.m. Finally, an additional public hearing was translated into the Korean language ("Translated Hearing"). The Translated Hearing was held in New Castle County at the Delaware Technical & Community College, Stanton Campus in Newark on Wednesday, December 2, 1998, beginning at approximately 8:30 p.m. Proper notice of all four hearings was provided as

required by law.

By memorandum dated January 13, 1999, the Hearing Officers submitted their report and recommendation, and that document is expressly incorporated into this Order by reference.

II. Findings

1. Proper notice of all four hearings was provided as required by law.

2. Public workshops were held before the hearing to educate the regulated community, and one of them was translated into Korean for the benefit of the regulated community.

3. In all, four public hearings were held to provide significant public notice and opportunity to comment on the proposed regulatory action. In addition, one of the public hearings was translated into Korean in order to provide even greater opportunity for public comment.

4. AQM's response document and suggested changes to the regulatory proposal were extremely well thought out, and rationally based in the evidence in the record of these proceedings.

5. None of the changes made to the proposal after it was subject to public notice constitute significant changes.

6. To allow further time for dry cleaners to comply with the proposed regulatory changes, the effective date of the changes shall be June 30, 1999.

III. Order

In view of the above findings, it is hereby ordered the proposed regulatory changes be adopted in the manner and form provided by law.

IV. Reasons

Adoption of these changes to the Regulations Governing the Control of Air Pollution will further the policies and purposes of 7 Del. C. Chapter 60, in that it will allow the Department to regulate the Hazardous Air Pollutant perchloroethylene in a manner that is consistent with the federal regulations. In addition, delaying the effective date of this regulation until June 30, 1999, will allow additional time for the regulated community to understand and comply with the regulations.

Mary L. McKenzie, Acting Secretary

The Department amends Regulation 24 by repealing Section 39. Section 39 and the Table of Contents reference to Section 39 follows.

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Section 39 - Perchloroethylene Dry Cleaning [RESERVED].
1/11/93 2/11/99

a. Applicability.

1. This Section applies to any perchloroethylene dry cleaning facility.

2. Perchloroethylene dry cleaning facilities that are coin-operated are exempt from the provisions of paragraphs (e)(1) and (e)(2) of this Section.

3. Any other facilities that the Department determines are demonstrated to experience hardships that justify exclusion are exempt from the provisions of paragraphs (e)(1) and (e)(2) of this Section provided that their exemption is approved as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

b. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in the November 15, 1990 Clean Air Act Amendments, or in Section 2 of this regulation.

"Dry cleaning facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, any washer, dryer, filter and purification system, waste disposal system, holding tank, pump, and attendant piping and valves.

e. Standards. The owner or operator of a perchloroethylene dry cleaning facility subject to this Section shall:

1. Vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective

control device.

2. Emit no more than 100 parts per million volumetric (ppmv) of volatile organic compounds (VOCs) from the dryer control device before dilution.

3. Maintain the system so as to prevent the leaking of liquid VOC and prevent perceptible vapor losses from gaskets, seals, ducts, and related equipment.

4. Cook or treat all diatomaceous earth filters so that the residue contains 25 kilograms (kg) (55 pounds [lb]) or less of VOC per 100 kg (220 lb) of wet waste material.

5. Reduce the VOCs from all solvent stills to 60 kg (132 lb) or less per 100 kg (220 lb) of wet waste material.

6. Drain all filtration cartridges in the filter housing for at least 24 hours before discarding the cartridges.

7. Dry or store all drained cartridges so that VOC is not emitted to the atmosphere.

d. Compliance provisions.

1. Compliance with paragraphs (e)(1), (e)(6), and (e)(7) of this Section shall be determined by means of a visual inspection.

2. Compliance with paragraph (e)(3) of this Section shall be determined by means of a visual inspection of the following components:

i. Hose connections, unions, couplings and valves.

ii. Machine door gaskets and seatings.

iii. Filter head gasket and seating.

iv. Pumps.

v. Base tanks and storage containers.

vi. Water separators.

vii. Filter sludge recovery.

viii. Distillation unit.

ix. Diverter valves.

x. Saturated lint from lint basket.

xi. Cartridge filters.

3. Compliance with paragraph (e)(2) of this Section shall be determined by one of the following:

i. A test as described in EPA Guideline Series document, "Measurement of Volatile Organic Compounds," EPA-450/2-78-041.

ii. Proof of the proper installation, operation, and maintenance of equipment that has been demonstrated to be adequate to meet the emission limit in paragraph (e)(2) of this Section.

4. Compliance with paragraphs (e)(4) and (e)(5) of this Section shall be determined by means of the test method in paragraph (e) of this Section.

e. Test methods. The test method in paragraph (e) of this Section shall be used to determine compliance with paragraphs (e)(4) and (e)(5) of this Section.

1. Applicability of the method. This method is

applicable to the sampling and determination of perchloroethylene in wet waste material from diatomaceous earth filters and solvent stills at perchloroethylene dry cleaners on a weight percent basis.

2. Principle. Samples are obtained from waste material at a perchloroethylene dry cleaning facility. A known sample mass is mixed with water and placed in a glass still equipped with a Liebig straight-tube type reflux condenser and a Bidwell-Sterling type graduated trap. Water and perchloroethylene in the sample are separated through repeated distillation until all of the perchloroethylene has been recovered in the trap and the volume recorded. The mass of perchloroethylene collected is determined from the product of its volume and specific gravity. The total weight of perchloroethylene obtained is divided by the total weight of sample analyzed to obtain the perchloroethylene content of the wet waste residue.

3. Apparatus. The following apparatus shall be used:

i. Flask. Round bottom, short-necked flask having a nominal capacity of 500 milliliters (ml).

ii. Condenser. Liebig straight-tube type, with a jacket not less than 400 millimeters (mm) long and with an inner tube having an outside diameter of 10 to 13 mm.

iii. Trap. Bidwell-Sterling type, graduated from 0 to 5 ml in 0.1 ml divisions. Calibrate at four or more points by first filling the trap with water and then adding a hydrophobic solvent with a specific gravity greater than water from a standard buret having a calibrated capacity at least equal to that of the trap. The error of the indicated volume shall not exceed 0.05 ml.

iv. Heater. Any suitable gas burner or electric heater for the glass flask.

v. Sample container. Metal can with a leakproof closure, 150 ml.

4. Sampling procedure.

i. From distiller (cooker).

A. After a cycle of perchloroethylene distilling and when the still bottoms have come approximately to room temperature (i.e., 21 to 38°C), obtain three 150-ml samples of the wet waste residue from the distiller (cooker) drain. Completely fill each of the three sample containers to prevent evaporation loss.

B. Immediately close the sample container lids securely.

C. Label the containers using waterproof and oil-proof ink.

D. Store the samples in a cool, dry atmosphere.

E. Transfer the samples to the appropriate laboratory for analysis within 48 hours of obtaining the samples. The samples shall remain sealed until the time of analysis.

ii. From wet waste containers.

A. Large unmixed containers. Using a clean

sampling spoon, spatula, or other appropriate device, obtain three 150-ml samples. Each sample shall be comprised of three 50-ml subsamples, one each from the top, midpoint, and bottom of the wet waste container. Transfer the three subsamples that comprise each of the 150-ml samples to a sample container. Each of the three sample containers should be completely filled to prevent evaporation loss.

B. Small containers. If the waste container can be thoroughly mixed prior to sampling, mix the container contents thoroughly and obtain three 150-ml samples by pipetting. The pipette should have a capacity of at least 150 ml and should be long enough to reach within 2 cm of the bottom of the wet waste container. Each 150-ml sample should be transferred to a sample container. Each sample container should be completely filled to prevent evaporation loss.

C. Immediately close the sample container lids securely.

D. Label the containers using waterproof and oil-proof ink.

E. Store the samples in a cool, dry atmosphere.

F. Transfer the samples to the appropriate laboratory for analysis within 48 hours of obtaining the samples. The samples shall remain sealed until the time of analysis.

5. Analysis procedure.

i. Conduct duplicate analyses of each sample and record the recovered perchloroethylene from each analysis.

ii. For each analysis, weigh and record the weight of an empty flask and stopper (W_i) to the nearest 0.1 mg.

iii. Mix each unopened sample container by shaking.

iv. Open the sample container and immediately transfer approximately 20 ml of wet waste material to the flask.

v. Stopper the flask and reseal the sample container.

vi. Weigh and record the weight of the flask plus added portion, d_i , to the nearest 0.1 g. The mass added to the flask shall not exceed 35 g.

vii. Add water to the flask to make a total mixture volume of approximately 250 ml.

viii. Fill the trap with cold water.

ix. Connect the flask to the distillation trap.

x. Assemble the apparatus so that the tip of the condenser is directly over the indentation in the trap.

xi. Heat the flask so that refluxing starts within 7 to 10 minutes. Adjust the rate of boiling so that the condensed distillate is discharged from the condenser at a rate of 1 to 3 drops per second.

xii. From the time refluxing starts, obtain readings of the amount of perchloroethylene collected after 5, 15, and 30 minutes, and each following 15 minutes. End the test

when the volume of perchloroethylene is increased by not more than 0.1ml in a 15-minute period or the amount of perchloroethylene exceeds the trap capacity.

xiii. At the end of the test run, turn off the heater. Allow the equipment to stand at least 30 minutes to allow the distillate to settle clear and to cool to room temperature.

xiv. Read the volume of perchloroethylene collected in the trap. If the amount of perchloroethylene exceeded the calibrated capacity of the trap, report the volume of perchloroethylene as 5.0ml plus.

6. Calculations:

i. Calculate the total mass of the portion in the flask:

$$S_i = d_i - W_i$$

where:

S_i = Weight of wet waste portion, g.

W_i = Weight of the empty flask and stopper, g.

d_i = Weight of flask plus wet waste portion, g.

ii. Calculate the total mass of perchloroethylene (f_i) collected in the trap from each analysis:

$$F_i = V_i \times D$$

where

f_i = Weight of perchloroethylene in the wet waste portion, g.

V_i = Volume of perchloroethylene collected in the trap, ml.

D = Density of perchloroethylene at 20°C, 1.6227g/ml.

iii. Calculate the perchloroethylene content of the wet waste (R) using the following equation:

$$R = \frac{\sum_{i=1}^n 3f_i}{\sum_{i=1}^n 3S_i} \times 100$$

where:

R = The perchloroethylene content of the wet waste, expressed in kg per 100kg (lb per 200 lb) wet waste material.

f_i = Weight of perchloroethylene in the wet waste portion, g.

S_i = Weight of wet waste portion, g.

n = The total number of analyses.

7. Precision and Accuracy:

i. Accuracy.—Concentrations of audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report.

ii. Precision.—Duplicate results produced by the same analyst should be considered suspect if they differ by more than 5 percent.

f. Recordkeeping.—Each owner or operator of a perchloroethylene dry cleaning facility subject to this Section shall maintain the following records in a readily accessible location for at least 5 years and shall make these records available to the Department upon verbal or written request:

1. A record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit.

2. A record of the results of visual leak inspections conducted in accordance with paragraph (d) of this Section.

3. The results of all tests conducted in accordance with the requirements described in paragraphs (d)(3) and (d)(4) of this Section.

g. Reporting requirements.—The owner or operator of any facility containing sources subject to this Section shall:

1. Comply with the initial compliance certification requirements of Section 5(a) of this regulation.

2. Comply with the requirements of Section 5(b) of this regulation for excess emissions related to the control devices required to comply with paragraph (c) of this Section, as well as any other State of Delaware exceedance reporting requirements.

DIVISION OF AIR & WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No. 99-A-0002

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Mary L. McKenzie, Acting Secretary

The Department amends Regulation 38 by adding Subpart M, which follows. Subpart M does not change any of the existing subparts of Regulation 38 and shall be placed between existing Subpart B and Subpart Q.

REGULATION NO. 38 Amendment**EMISSION STANDARDS FOR HAZARDOUS
AIR POLLUTANTS FOR SOURCE CATEGORIES**

~~2/4/~~ 6/30/99

**Subpart M Perchloroethylene Air Emission Standards for
Dry Cleaning Facilities**

The provisions of Sections 63.320 through 63.325 in Subpart M, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) Except in section 63.325 of this subpart, "Department" shall replace "Administrator".

(b) Paragraph 63.320(b) shall be replaced with the following language: "Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on ~~February 11, 1999~~ June 30, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act."

(c) Paragraph 63.320(c) shall be replaced with the following language: "Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of this subpart beginning on ~~February 11, 1999~~ June 30, 1999."

(d) Dry cleaning machine systems subject to paragraphs 63.320(d) or 63.320(e) shall also be subject the requirements of 63.324(c).

(e) Paragraph 63.320(f) shall be replaced with the following language: "

(f)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (f)(1), if, unless there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (d) or (e) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (d) or (e).

~~(2) A dry cleaning facility identified in paragraph (f)(1) above shall comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 within 180 calendar days from the date that the facility determined that it exceeded the amounts specified in paragraph (d) or (e).@~~

(f) Paragraph 63.320(i) shall be replaced with the following language:

"(i)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those

amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under Secs. 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (i)(1), if, unless there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (g) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (g).

~~(2) A dry cleaning facility identified in paragraph (i)(1) above shall comply with the appropriate requirements for major sources under Sec. 63.322, Sec. 63.323, and Sec. 63.324 within 180 calendar days from the date that the facility determined that it exceeded the amounts specified in paragraph (g)."~~

(g) Paragraph 63.320(j) shall be replaced with the following language:

(j)(1) All coin-operated dry cleaning machines are exempt from Sec. 63.320(f), Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).

(2) Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k)."

(h) Paragraph 63.320(k) shall be replaced with the following language: "The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting until December 9, 1999. All sources receiving deferrals shall submit Regulation 30 permit applications by December 9, 2000. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320."

(i) The definition of Administrator found in Section 63.321 shall be replaced with the following language: "Administrator means the Administrator of the United

States Environmental Protection Agency."

(j) The definition of Department is added to the list of definitions found in Section 63.321 with the following language: "*Department* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended."

(k) The definition of Diverter valve found in Section 63.321 shall be replaced with the following language: "*Diverter valve* means a flow control device or flow control devices that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open."

(~~k~~ l) The opening to paragraph 63.322(b) shall be replaced with the following language: "The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed on or after September 22, 1993:"

(~~l~~ m) Paragraph 63.322(m) shall be replaced with the following language: "The owner or operator of a dry cleaning system shall repair all perceptible leaks detected under paragraph (k) or (l) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt."

(n) The opening to paragraph 63.323(b) shall be replaced with the following language: "*When a carbon adsorber is used to comply with Sec. 63.322(a)(2), Sec. 63.322(h) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with Sec. 63.322(b)(3), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube, while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber to determine that the perchloroethylene concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:*"

(~~m~~ o) The opening to paragraph 63.324(a) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall notify the Department in writing by ~~February 11, 1999~~ June 30, 1999 or upon startup, whichever is later, and provide the following information:"

(~~n~~ p) The opening to paragraph 63.324(b) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall submit to the Department on or before the 30th day following start-up or ~~February 11, 1999~~ June 30, 1999, whichever is later, a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:"

~~(o~~ q) ~~The opening to p~~ Paragraph 63.324(c) shall be replaced with the following language: "(c)(1) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption amounts specified in paragraphs 63.320 (d), (e) or (g) shall notify the Department not later than 30 days after the exceedance occurred. The notification shall provide the following information and shall be signed by a responsible official who shall certify its accuracy:

(i) The name and address of the dry cleaning facility;

(ii) A copy of the yearly perchloroethylene consumption records that indicate that there was an exceedance of the applicable amount specified in paragraphs 63.320 (d), (e) or (g);

(iii) The circumstances that led to the exceedance; and

(iv) A statement that all information contained in the notification is true and accurate.

(2) Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements under Sec. 63.320 (f)(1) or (i)(1) shall submit to the Department on or before the dates specified in Sec. 63.320 (f)(~~2~~ 1) or (i)(~~2~~ 1), a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

(i) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);

(ii) Whether or not they are in compliance with each applicable requirement of Sec. 63.322; and

All information contained in the statement is accurate and true."

~~(p) Paragraph 63.324(d)(1) shall be replaced with the following language: "The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log. If the purchased perchloroethylene was to used to initially fill a newly installed dry-to-dry machine, the volume and date of the purchase is identified separately from the other monthly purchases;"~~

(~~q~~ r) The opening to paragraph 63.325(a) shall be replaced with the following language: "Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under Sec. 63.322 shall collect, verify, and submit to the Administrator (with copy to the Department) the following information to show that the alternative achieves equivalent emission reductions:"

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FIFTY-SEVEN

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 1998 AND INITIAL SUBALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 1999

WHEREAS, pursuant to 29 Del.C. 5091, the State's private activity bond volume cap ("Volume Cap") for 1998 under Section 103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Forty-Nine, \$75,000,000 of the Volume Cap for 1998 which had been allocated to the State of Delaware was further suballocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive Order Number Forty-Nine is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 1998 and 1999 is allocated among the various State and local government issuers by 29 Del. C. 5091 (a); and

WHEREAS, Kent County has reassigned \$15,000,000 of its unallocated Volume Cap for 1998 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$15,000,000 of its unallocated Volume Cap for 1998 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has reassigned \$19,340,000 of its unallocated Volume Cap for 1998 to the Delaware State Housing Authority; and

WHEREAS, pursuant to 29 Del. C. 5091 (b), the State's \$75,000,000 Volume Cap for 1999 is to be suballocated by the Governor among the Delaware State Housing Authority, the Delaware Economic Development Authority and other governmental issuers within the State; and

WHEREAS, the Secretary of Finance recommends (i) that the \$30,000,000 unallocated Volume Cap for 1998 reassigned to the State of Delaware by other issuers be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$19,340,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's \$75,000,000 Volume Cap for 1999 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$30,000,000 of unallocated Volume Cap for 1998 that has been reassigned by other issuers to the State of Delaware is hereby reassigned to the Delaware State Housing Authority for carry forward use, in addition to the \$37,500,000 previously suballocated to the Delaware State Housing Authority for 1998 under Executive Order Forty-Nine and the \$19,340,000 of unallocated Volume Cap for 1998 that has been reassigned by the Delaware Economic Development Authority, for a total carry-forward amount of \$86,840,000.

2. The \$75,000,000 allocation to the State of Delaware of the 1999 Volume Cap is hereby suballocated \$37,500,000 to the Delaware State Housing Authority and \$37,500,000 to the Delaware Economic Development Authority.

3. The aforesaid suballocations have been made with due regard to actions taken by other persons in reliance upon previous suballocations to bond issuers.

Approved this 28th day of December, 1998

Thomas R. Carper
Governor

Attest:

Edward J. Freel
Secretary of State

GOVERNOR'S APPOINTMENTS

1395

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Panel on Intergovernmental Planning & Coordination	Mr. R. Thorpe Moeckel, Chairperson	12/24/01
Board of Cosmetology & Barbering	Mr. John P. Bonarigo Ms. Bonnie J. Paynter	12/04/01 04/30/00
Board of Examiners of Private Investigators & Sec. Agencies	Mr. James R. Gettier	12/04/01
Council on Boiler Safety	Mr. Theobald P. Omlor, Jr. Mr. Dennis E. Stordahl	12/24/01 12/24/01
Council on Development Finance	Mr. Steven Biener Mr. Donald J. Lynch Ms. Ann T. Tansey Mr. F. Samuel Wilcox	12/24/01 12/24/01 12/24/01 12/24/01
Council on Environmental Control	The Honorable Robert J. Voshell	12/24/01
Delaware Bicycle Council	Mr. Paul W. Layton	04/18/00
Delaware Commission on Veterans Affairs	Mr. Charles A. Kashner Mr. Reese E. Phillips	12/24/02 12/24/02
Delaware Harness Racing Commission	Mr. Robert W. Kerr	04/28/00
Delaware Health Care Commission	Mr. A. Herbert Nehrling, Jr.	12/04/02
Delaware Institute of Medical Education & Research	Dr. Kim L. Carpenter Mr. Charles S. McDowell	12/24/01 12/24/01
Human Relations Commission	Ms. Nicole Cunningham Ms. Mary Powell Ms. Latricia Odette Wright	12/04/02 12/04/02 12/04/02
Juvenile Justice Advisory Group	Ms. Melissa A. Grey	Pleasure of the Governor
Pesticide Advisory Committee	Mr. John Barndt	12/04/01
State Board of Electrical Examiners	Mr. Steven Dignan Mr. Bruce A. Goldsborough	12/04/01 12/04/01

STATE OF DELAWARE
 DEPARTMENT OF JUSTICE
 ATTORNEY GENERAL OPINION
 NO. 98-IB09

September 25, 1998

Mr. Milton F. Morozowich
 RD 2, Box 166
 Bridgeville, DE 19933

RE: Freedom of Information Act Complaint Against
 Woodbridge School District

Dear Mr. Morozowich:

This letter is our written determination in response to your letter of July 29, 1998 (received by this Office on August 5, 1998) alleging that the Woodbridge School District (the "School District") violated the Freedom of Information Act, 29 Del.C. Sections 10001 - 10005 ("FOIA"). You claim that the School District discussed five matters in executive session at a meeting on July 28, 1998 which are not authorized by FOIA. Those matters were: (1) Secretarial - Central Office; (2) WES Assistant Principal; (3) J.V. Football; (4) Student Code of Conduct and (5) Cafeteria.

By letter dated August 6, 1998, we asked the School District to respond to your complaint within ten days. The School District asked for an extension of time to respond, which we granted. By letter dated August 28, 1998, the School District responded to your allegations, denying any violation of FOIA. The School District provided us with copies of a Memorandum dated July 28, 1998 from Dr. Kevin E. Carson to Dr. Robert C. Sutton (personnel recommendations for the July 28, 1998 meeting), the agenda posted for the meeting, and the minutes of that meeting and the executive session.

The School District acknowledges that FOIA does not authorize a public body to go into executive session to discuss a subject like a student code of conduct. The School District points out, however, that shortly after the subject came up, "Dr. Sutton advised the Board that the topic was not appropriate for executive session, at which time the discussion ended."

As the Chancery Court has noted, "[t]here is always a risk that a public body will drift into discussing matters beyond the proper purpose of an executive session." Common Cause of Delaware v. Red Clay Consolidated School District, Del. Ch., 1995 WL 733401, at p. 3 (Dec. 5, 1995) (Balick, V.C.). But there is no FOIA violation if this is brought to the public body's attention in time, and "discussion of that subject would immediately cease." Id. We agree with the School Board that "a public body should be encouraged, rather than punished, for attempting to curtail

inappropriate discussions in executive session." We find no violation of FOIA in the limited, immediately curtailed, discussion of a student code of conduct.

Two of the matters discussed during the executive session on July 28, 1998 ("Secretarial Central Office" and "WES Assistant Principal") fall within the "personnel" exception under FOIA, 29 Del.C. Section 10004(b)(9) (discussion of the "names, competency and abilities of individual employees"). The reference to "Cafeteria" was a discussion of contract negotiations for trash removal. Labor negotiations are a proper subject for executive session. See 29 Del.C. Sections 10004(b)(6) and 10002(d)(7) (exemption records "involving labor negotiations or collective bargaining").

As for "J.V. Football," it is not clear whether that subject fell within the personnel exception since we do not know if the School District was considering any specific coaches at the time. The minutes of the meeting state that you made motion "to consider a Contingency Budget for Junior Varsity Football and hire an Assistant Coach with the guarantee of 50% salary if program does not make; with an option to go to Varsity if programs does not make." If there were some discussion of this contingency budget during executive session, then that may have violated FOIA. But since you were the member of the School District who sponsored the contingency budget, we do not think it appropriate at the same time for you to challenge the validity of action you took.

Finally, you suggest in your complaint letter that the agenda posted for the July 28, 1998 meeting failed to give proper notice of the subjects for executive session. The agenda listed two subjects: "Personnel" and "Negotiations." Having reviewed the minutes of the meeting, we find that the discussion during the executive session on July 28 dealt with personnel matters and contract negotiations. The notice provided, therefore, was not deficient or misleading.

Conclusion

Based on your complaint, the School District's response, and the documents provided to us, we determine that the School District did not commit any violation of FOIA in connection with the July 28, 1998 meeting.

Very truly yours,
 W. Michael Tupman

Approved:
 Michael J. Rich
 State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 98-IB10

October 2, 1998

The Honorable Thomas J. Cook
State Election Commissioner
32 Loockerman Street, M101
Dover, Delaware 19904

Re: Candidacy of Douglas Salter

Dear Commissioner Cook:

You have asked "whether there would be any violation of federal, state or constitutional law if an active state trooper campaigned for or was elected to the office of State Representative in the State of Delaware."¹ Your request has been prompted by the candidacy of Douglas Salter, an active state trooper, who is a candidate for State Representative in the 17th Representative District. The inquiry actually raises two questions. The first, whether Mr. Salter may campaign for the office of State Representative, can be easily answered. The second question, whether, if elected, he can serve as both a State Representative and as a state trooper, is more complex.

As to the first issue, assuming Mr. Salter is engaging in campaign activities in conformity with any relevant State Police regulations, and assuming he is not in violation of any federal law, he is guaranteed by the Law Enforcement Officers Bill of Rights "the same rights to engage in political activity as are afforded any other person." 11 Del.C. § 9200. This broad grant of authority clearly, includes the right to campaign for elective office.

The more significant issue is whether, if elected, Mr. Salter, a sergeant in the Delaware State Police, would violate the prohibition against holding dual office contained in Art. II § 14 of¹ the Delaware Constitution² by serving both as a State Representative and as a state trooper. Stated differently, the question to be resolved is not whether Mr. Salter may run for State Representative but whether his election to, and assumption of, the office of State Representative would result in his resignation from the State Police by operation of law. See *Opinion of the Justices*, Del.Supr., 245 A.2d 172, 174 (1968). In the *Opinion of the Justices*, in answer to questions propounded by the

1. Although we are aware that other uniformed officers may have campaigned for or been elected to office, we find no record of this office having previously opined on this issue.

Governor, the Supreme Court held that proposed legislation that would have prohibited a person from receiving a salary as a "mere employee" of the State while also serving as a Senator or Representative was unconstitutional as exceeding the prohibition contained in Art. 11 § 14 Del. Const. Id. at 174. In reaching its conclusion, the Court recognized that not every state employee is the holder of a state "office" so as to preclude the employee from serving as a Senator or Representative as well. Id.

In determining what is a state "office" and therefore who is a "public officer," the Supreme Court has identified certain criteria which must be weighed against the facts of the particular case. Specifically, the Court has stated that:

[n]o single definition will despositively identify who is a "public officer," as that term is used in several separate sections of the Delaware Constitution. In determining who is a public officer, this Court has identified four *non-exclusive* criteria which are most frequently indicative of a public office: (1) the exercise of some portion of the State's sovereign power, (2) tenure in office, (3) fees and emoluments, and (4) oaths of office. (Footnote omitted) (Emphasis added).

Opinion of the Justices, Del.Supr., 672 A.2d 4, 7 (1995); See also *Raduszewski v. Superior Court*, Del.Supr., 232 A.2d. 95 (1967); and State ex rel. *Biggs v. Corely*, Del.Supr., 172 A. 415 (1934).

In *Raduszewski v. Superior Court*, Del.Supr., 232 A.2d 95 (1967), the Court when determining whether an employee of the Motor Vehicle Department could be charged with certain common law offenses which, at that time, only applied to persons holding public office, decided that a motor vehicle inspector was a public employee not a public officer. The Court cited two earlier cases *Green v. Glen*, Del. Super., 4 A.2d 366 (1939) and *Martin v. Trivitts*, Del. Super., 103 A.2d 779 (1954) in which the Court found that because the duties of the Secretary of the Department of Elections were not defined by statute but could be changed at will by the Department, the Secretary was, by necessity, not a public officer but instead was a public employee. The Court in *Trivitts* held:

2.

Section 14 provides in part:
"No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State which shall have been created, or the emoluments of which shall have been increased during such time. No ... person holding any office under this State ... shall during his continuance ... in office be a Senator or Representative . . ."

A position, the duties of which are undefined by law and which can be changed at the will of the superior, is not a public office but a mere public employment. In order to constitute a public office, and the incumbent a public officer, it is necessary that the powers and duties of the position be conferred and defined by law. (Citations omitted).

Id. at 780.

When applying this body of law to the instant case, we look to the statute creating the Delaware State Police. Although the powers and duties of the State Police generally are set out in 11 Del.C. § 8302, 11 Del.C. § 8301 provides that "[t]he Department may classify such state police according to such rank as the Department determines, and according to the duties assigned to them from time to time by the Department." (Emphasis added). Thus, like the Secretary of the Department of Elections, Sergeant Salter has such duties as are assigned to him by the Department of Public Safety. According to his job description, Sergeant Salter is charged with making recommendations to improve and create policies and programs, but may not implement such polices and programs. He reports to the Planning Director, who reports to the Superintendent. Although Sergeant Salter, took an oath, as do all Delaware law enforcement officers, he has no fixed term or tenure in office, and his duties are undefined by law and can be changed at will by the Department.

We conclude that Mr. Salter, if elected and sworn in as a State Representative will not be deemed to have forfeited his employment with the State Police, since we find that his position with the State Police constitutes "mere employment" not "office holding." We believe that this conclusion is consistent with prior courts interpretations and opinions of this office dealing with matters related to the election process in Delaware. As has been consistently held:

The right of a person to be a candidate for a public office is a fundamental one that should be restricted only by clear constitutional or statutory language. "[A]ny question or doubts of eligibility of a candidate should be resolved in favor of the candidate." (Citations omitted). (Emphasis added).

Democratic Party of the State of Delaware v. Department of Elections for New Castle County, et al., Del. Super., C.A. No. 94C-08-227,1994 WL 555405, Ridgely, P.J. (Sept. 6,1994) at 6, *aff'd.* Del. Supr., 650 A.2d 1305 (1994) (Table); *Att'y Gen. Op. 98-IB-06*; *Att'y Gen. Op. 94-1024*.

Of course, our conclusion is based on the law as it presently exists. We offer no opinion on the broader issue of whether it is good public policy to permit state police officers or other state employees also to serve as elected officials. That general policy matter lies within the province

of the General Assembly and can be addressed by it through amendment to Art. 11 § 14 of the Delaware Constitution should it deem such an amendment to be in the public's interest.

Finally, despite some published misstatements to the contrary, you are aware that opinions of the Attorney General are advisory and not legally binding on those to whom they are given. *Council 81, AFSCME v. State, Department of Finance*, Del. Ch., 288 A.2d 453 (1972). Therefore, as we have previously advised, we believe the only way to resolve this matter definitively is for one of the parties in interest to place the issue before a court of competent jurisdiction.

If you have any further questions, please feel free to contact us.

Very truly yours,
Malcolm S. Cobin
Assistant State Solicitor

Approved
Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 98-IB11

November 6, 1998

Richard L. Sklut, DDS
2205 Sliverside Road
Wilmington, DE 19810

Re: Opinion of the Attorney General concerning the licensing of oral maxillofacial surgeons

Dear Dr. Sklut:

On behalf of the Delaware Board of Dental Examiners, you have asked whether a board certified oral and maxillofacial surgeon with a certificate to practice medicine and surgery in the State of Delaware can practice such surgery in this State without also being licensed as a dentist.

Oral and maxillofacial surgery is a unique dental specialty in that it is commonly practiced by both physicians and dentists with adequate training and while it is not a recognized as a medical specialty, it is recognized as a dental specialty by the American Dental Association. In fact, the organization which provides national board certification for oral and maxillofacial surgeons, the Board of Oral and

Maxillofacial Surgery, requires a dental degree or other dental education approved by the American Dental Association as a condition of national board certification.

It is our opinion that the issuance of a dental license by the Board of Dental Examiners is required even for a duly licensed medical doctor to practice exclusively as an oral and maxillofacial surgeon in Delaware.¹

In relevant part, the practice of medicine is defined in the Medical Practice Act (24 Del.C. chapter 17) as including surgery and all respective branches thereof, 24 Del.C. § 1703(a). This is a broad definition and, although such surgery is nationally recognized as a dental specialty, it is nonetheless, broadly speaking, a branch of surgery. Therefore, in the absence of other particular statutory language, a duly licensed Delaware medical doctor, as a part of his or her medical practice could practice such surgery.

Accordingly, one must inquire whether other statutory enactments condition the terms under which a medical doctor can practice oral and maxillofacial surgery in Delaware. There are a number of states in which oral and maxillofacial surgery may be practiced under either a medical license or a dental license. In fact, that situation apparently pertained in Delaware in the Code of 1915 where Chapter 30, Part 7 of Section 890 provided "Nothing in this chapter shall be so construed as to interfere with the rights and privileges of physicians and surgeons in the discharge of their professional duties."

In 1933, in 38 Del. Laws ch. 48, § 30, the General Assembly included the following limiting language in the dental act: "... unless he practices dentistry as a specialty." That language is substantially similar to the wording found in the present act in 24 Del.C. § 1134(b)(1). There is a clear legislative intent to limit the broad scope of the statutory description of surgery as it appears in the Medical Practice Act. It should also be noted that 24 Del.C. § 1764 expressly provides that the Medical Practice Act does not apply to dentists or to dental surgery. This statutory exemption addresses the fact that a duly licensed dentist may, if qualified, perform oral surgery without being licensed as a physician. It does not answer the question of whether a duly licensed physician also needs a dental license to practice oral and maxillofacial surgery in Delaware. The answer to that question turns on the specific wording of the Dental Practice Act and not the Medical Practice Act.

1. This opinion does not address any credentialing or by-law requirements of hospitals or other facilities, except to observe that it is our understanding that there are hospitals in Delaware where the practice of oral and maxillofacial surgery is placed within the dental department and others where it is within the department of surgery. Such placement is not dispositive of the question of whether or not a dental license is required under current Delaware law.

The provisions governing the requirements and conditions for the issuance of a dental license are contained in Chapter II, Title 24 of the Delaware Code. Twenty-four Del.C. § 1134(b)(1) provides that nothing in chapter I I prevents "[a] legally qualified physician or surgeon from extracting teeth or treating pathological conditions about the mouth, teeth, oral tissues or of *radiographing such tissues unless the person practices dentistry as a specialty.*" (Emphasis supplied.)

The statute governing dental practice cannot limit the medical doctor's right to perform surgery. However, since oral and maxillofacial surgery is a dental specialty, and the practice of that specialty is governed by the provisions of 24 Del.C. ch. 11, a licensed medical doctor cannot practice oral and maxillofacial surgery in Delaware without practicing dentistry as a specialty. Therefore having a medical license would not obviate the need for a concurrent dental license in order to perform oral and maxillofacial surgery in Delaware.

It is therefore the advice of the office of the Attorney General that the Board may conclude that an oral and maxillofacial surgeon (irrespective of board certification), either with or without a license to practice medicine and surgery in Delaware, must have a dental license issued by the Board of Dental Examiners to practice lawfully this dental specialty within Delaware.

Very truly
Michael M. Tischer
Deputy Attorney General

Approved:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 98-IB12

November 10, 1998

Mr. Milton F. Morozowich
R.D. 2, Box 166
Bridgeville, DE 19933

RE: Freedom of Information Act Complaint Against
Woodbridge School District

Dear Mr. Morozowich:

This is our written determination in response to your letter of September 23, 1998 alleging that the Woodbridge

School District (the "School District") violated the Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA").

You claim that the School District violated the open meeting requirements of FOIA by: (1) holding a public meeting on September 17, 1998 at a place which could not accommodate the members of the public who wanted to attend- (2) continuing to meet and discuss public business after some members of the public had been directed elsewhere, and (3) by meeting privately with the Band Director after the public meeting.

By letter dated September 30, 1998 we asked the School District for its response to your complaint. The School District asked for an extension of time until October 26, 1998, which we granted.

By letter dated October 21, 1998, the School District responded, enclosing a copy of the notice and agenda for the September 17, 1998 meeting and the minutes. According to the School District, at the time it posted the notice of the September 17, 1998 meeting, the School District did not expect a large crowd for the group discussion with the PTA. A larger group of people showed up after the September 15, 1998 resignation of the Band Director (Ty Sponsler) wanting to know whether the School District would accept his resignation. As stated in the School District's letter: "When it became apparent to the Board that night that a large number of the members of the public who were in attendance were there to discuss the band director's resignation, the Board believed it made adequate accommodations by indicating to those parents that when the Board finished the discussion with the PTA it would move to the cafeteria which would accommodate the large number of music booster parents in attendance."

The School District contends that it did not tell anybody to leave the library. The music boosters were informed "that the band discussion would be held in the cafeteria in order to accommodate the large number of music boosters in attendance. This is confirmed in the minutes.

As for the alleged "private" meeting afterwards, the School District claims that two board members were approached by Mr. Sponsler. who wanted to apologize to them about the circumstances of tile meeting. After a third board member approached, "Mr. Morozowich walked up and informed tile three that 'you can't talk with him, this is a quorum.'"

By letter dated October 29, 1998, you responded to the School Board's letter. You dispute that the music boosters were able to enter the library, but rather had to stand outside. You also dispute that the meeting in the cafeteria started at 8:10 p.m., as the School Board contends. You claim that it started at 8:30 p.m. The remainder of your October 29, 1998 letter is a reiteration of your original complaint.

1. Adequate Meeting Facilities

FOIA does not require that the meeting place of a public body have a seat for every potential citizen. The selection of the meeting site may violate the open meeting law only if it was unreasonable. In making that determination, our Office "need not look for optimal outcomes, but must seek to determine whether the local governmental unit achieved a reasonable balance under the circumstances presented at the time the decision was made." Att'y Gen. Op. 96-IB23 (June 20, 1995) (quoting State v. Village Board of Greendale, Wis. Supr., 494 N.W.2d 408, 420 (1993)).

At the time the September 17, 1998 meeting was scheduled, it was reasonable for the School District to expect a smaller group of people for the PTA group discussion. The School District had no reason to expect the larger crowd of music boosters who showed up concerned about Mr. Sponsler's resignation two days before. It was also reasonable for the School District to bifurcate the meeting and address the resignation issue in a larger forum (the cafeteria) to accommodate the music boosters. We find that the site selections by the School District were reasonable, and did not violate FOIA. The School District is not required to schedule its meetings in a room (like the auditorium, as you would have liked) to accommodate any possible number of persons who might attend. It is only when a public body has reason to believe that a large crowd is to be expected that larger accommodations may be required under tile open meeting law.

2. The Library Meeting

There is conflicting evidence whether any members of the public were denied access to the library so as to be unable to hear and participate in the PTA group discussion. According to the School District, a number of music boosters did attend that meeting, though the majority were not interested and went to the cafeteria to await discussion of the resignation issue. You claim that the music boosters were forced to stand outside the library, until they were directed to go to the cafeteria.

The minutes tend to support the School District since there is reference to an apology to the PTA "for the size of the group," suggesting the presence of the music boosters. For purposes of FOIA, however, we do not have to resolve this factual dispute. There is no evidence that the music boosters were interested in the PTA issues being discussed in the library. They were there to talk about the Band Director's resignation, which was discussed in the cafeteria, as you agree in your letter of October 29, 1998: "At approximately 8:30 P.M., the Board President called upon the "Music Boosters" spokesperson for comment, followed by individual comment from the Bank Director, individual parents, students, and community members in attendance."

Whether the meeting in the cafeteria started at 8:10 p.m. (according to the School District) or 8:30 p.m. (according to you) is irrelevant.

We find no violation of the open meeting law with respect to the PTA group discussion in the library.

3. The "Private Meeting" Afterwards

There is no evidence that the alleged "private" meeting by several members of the board was a deliberate attempt to discuss public business outside the requirements of the open meeting laws. Even if Mr. Sponsler's attempts to apologize to individual members of the board were deemed a matter of "public business," it is not disputed that this "private session" (as you call it) was "adjourned" after it was, as you describe it, "interrupted" by you. At most, this may have been a technical violation of the open meeting law which did not affect any substantial right of the citizenry to be involved in the discussion of public business.

Conclusion

Based on your complaint, the School District's response, and the documents provided to us, we determine that the School District did not commit any violation of FOIA in connection with the September 17, 1998 meeting.

Very truly yours
W. Michael Tupman
Deputy Attorney General

Approved:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 98-IB13

December 8, 1998

Mr. John Lopes
P.O. Box 694
Laurel, DE 19956

RE: Freedom of Information Act Complaint Against
Town of Laurel

Dear Mr. Lopes:
In your letter dated August 29, 1998 (received by this

Office on September 2, 1998), you alleged that the Town of Laurel (the "Town") had violated the Delaware Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"), by denying you access to public records. Specifically, you allege that the Town did not provide you with copies of notices sent out by the Code Enforcement Officer from April 1, 1997 to March 31, 1998 regarding violations of the Housing Code.

By letter dated September 17, 1998, we asked the Town to respond to this issue. By letter dated September 28, 1998, the Town responded. The Town took the position that, since there are potential criminal penalties for violations of the Housing Code, the notices you asked to see are excepted from disclosure under FOIA under the "investigative file" exception. Alternatively, the Town claims that the records are protected by the common law right of privacy.

On October 9, 1998, we asked the Town for further information to support their legal position, which we received on October 12, 1998. The release of this decision was unfortunately delayed by our inability to timely complete the necessary internal review process which we follow for every FOIA complaint.

STATUTORY PROVISIONS

Section 10003(a) of FOIA provides: "All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." Section 10002(d)(3) excepts from the definition of a "public record" "[i]nvestigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations, and child custody and adoption files where there is no criminal complaint at issue."

OPINION

Although the statute refers to "pending" investigations, the Chancery Court has held that the "investigative file" exception to FOIA applies even after the file has been closed. See NewsJournal Co. v. Billingsley, Del. Ch., 1980 WL 3043 (Nov. 20, 1980) (Hartnett, V. C.). Moreover, the investigatory file exception applies to administrative agencies, not just criminal law enforcement agencies such as the police. See, e.g., Equitable Trust Co. v. State, Md. Spec. App., 399 A.2d 908 (1979) (state human relations commission investigating charges of racial discrimination); State ex rel. McGee v. Ohio Board of Psychology, Ohio Supr., 550 N.E.2d 945, 947 (1990) (per curiam) (exception applied to "investigative activities of state licensing boards").

The Town's Code Enforcement Officer is charged with investigating violations of the Housing Code and enforcing,

if necessary, through criminal prosecution, violations of the Code. See Laurel Code Section 87-11 ("The provisions of this chapter shall be enforced by the Code Enforcement Officer."); Section 87-85 ("Violations and penalties" -- violation of the Housing Code is a "misdemeanor and, upon conviction thereof, shall be fined . . . or imprisoned for a term not to exceed thirty (30) days, or both").

If the Code Enforcement Officer has reason to believe that there is a Housing Code violation, then notice must be given and an opportunity to remediate. See Laurel Code Section 87-74. If the owner does not remediate, then the Town Solicitor can seek equitable relief (see Section 87-85.B.), or the Town can ask the Attorney General's Office to prosecute the matter criminally. According to the Town Solicitor, he has worked with the Attorney General's Office on a number of occasions in the past for criminal enforcement of Housing Code violations.

The Code Enforcement Officer is the kind of investigative agency whose files FOIA exempts from disclosure. Accordingly, the notices of Housing Code violations which you have asked to inspect and copy are not "public records" for purposes of FOIA. This investigative file exception applies whether or not the investigating agency decides "to file charges." McGee, supra. Indeed, the policies behind the exception are even more compelling when the agency decides not to take enforcement action, in order to protect the "identity of uncharged suspects." Id,

If any particular investigation in which you are interested resulted in criminal charges, then that becomes a matter of public record. While a citizen could still be denied access to the investigative agency's files under FOIA, the citizen may have access to whatever criminal records are available through the courts.

You raised three other issues in your complaint letter. Regarding Issue 2, FOIA does not require a public body to advise a citizen of his or rights under the statute to enforce the law. As for Issue 3, as a general rule you are correct that the reason why a citizen wants access to public records is not relevant, and that public records must be made available for inspection during normal business hours, not at the "convenience" of the public body. On the other hand, we have determined in the past that a public body can enact a rule or regulation requiring that an appointment be made in advance to inspect and copy records.

As for Issue 4, you are also correct that, as a general rule, the reason why a citizen wants access to public records is not relevant (unless the personal privacy rights of other citizens are involved). We decline, however, to render an advisory opinion on Issues 3 and 4, since you either had access to the documents you requested, or they are excepted from disclosure under FOIA.

Conclusion

For the foregoing reasons, we determine that the Town did not violate FOIA by denying you access to public records.

Very truly yours,
W. Michael Tupman
Deputy Attorney General

APPROVED:

Michael J. Rich
State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 98-IB14

December 17, 1998

Ms. Nancy H. Turner
176 West Main Street
Newark, DE 19711

RE: Freedom of Information Act Complaint Against
City of Newark

Dear Ms. Turner:

This is the Attorney General's written determination in response to your letter dated August 19, 1998 (received by this Office on August 26, 1998) alleging that the City of Newark (the "City") violated the Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"). Specifically, you allege that the City denied you the right to copy the minutes of an executive session held on June 9, 1997. You further allege that the City allowed another citizen, Alice Shurtleff, to copy these same records.

By letter dated September 28, 1998, we asked the City to respond to your complaint but to limit its response to two questions: (1) Whether the City provided other citizens with access to the minutes of the June 9, 1997 executive session; and (2) How does the City decide, as a matter of general practice, whether it will disclose minutes of executive session to the public.

By letter dated September 29, 1998, you asked us to clarify between reasonable access to public records, and the opportunity to copy records. You pointed out that, as a Council member, you had access to minutes of executive sessions, but that the City would not let you copy them. By

letter dated October 2, 1998, we clarified this point for purposes of the City's response to your complaint.

By letter dated October 5, 1998, we received the City's response. The City noted that the minutes of the executive session on June 9, 1997 was the subject of recent litigation, Turner v. City of Newark, Del. Ch., C.A. No. 15787 (Mar. 17, 1998) (Chandler, C.). The City contends that you did not "move or request that the Council vote on public disclosure of the 'non-protocol' personnel matters discussed on June 9, 1997" after the Chancery Court ruled in your favor. In contrast, another citizen, "Ms. Shurtleff made a formal request for the minutes. That request was placed before City Council. On July 27, 1998, the Council determined that public disclosure of the requested portions of the minutes would no longer defeat the lawful purpose for which the session was called under 29 Del.C. Section 10004(f)." The City maintains that its general practice is to consider requests for disclosure of minutes of executive session on a case-by-case basis. "[T]he Council acts on such request [by a citizen] or motion [by a Council member] after consulting with its attorney."

By letter dated October 7, 1998, the City further responded to your claim that you were denied the right to copy minutes of executive session. "In order to preserve the integrity and confidentiality of Executive Session minutes, the Secretary has adopted a practice of not distributing personal copies to Council Members. Until and unless the Council has made a determination that public disclosure will no longer 'defeat the lawful purpose' of an Executive Session, the Secretary does not permit any Member of Council to have a personal file copy of a set of Executive Session minutes." The City stated "that Ms. Turner has been provided nothing more nor less than her former colleagues on the Council in regard to access." The City distinguishes between Ms. Turner's position as a Council member, to which she is entitled to "access," and her position as a citizen to inspect and copy records for whatever use. The City characterizes the FOIA complaint, not as an "access" issue, but rather as a complaint "about a procedure which the City of Newark has adopted to attempt to maintain the integrity of Executive Session materials while permitting controlled access to Council Members upon request."

By letter dated October 12, 1998, you replied to the City's October 5, 1998 response. You dispute what the City claims as its historical practice of voting to decide whether to honor a request (from a citizen) or a motion (from a Council member) to release minutes of executive session. You stated that the City's stated practice was "boldly inconsistent" with the way in which the City had handled a request, one year earlier, from another citizen (Mr. Alfred Tarrant).

The Chancery Court Litigation

On July 1, 1997, you sued the City of Newark for

violating FOIA by going into executive session on June 9, 1997 to discuss matters that were not authorized by statute. The Court found that certain of the matters discussed clearly fell within the "personnel" exception for executive session: (1) the hiring of a new City Assistant Administrator; (2) the Police Chief's possibly taking a new job out-of-state; and (3) interviews for a new City Finance Director. At issue was whether the portion of the executive session, described as "Council Protocol," was a "personnel" matter. That portion of the meeting "involved a lengthy and candid discussion among the Mayor and certain Council members over the words and actions of other members of the Council and the public perception of Council performance. This discussion included personal criticisms, by some members of the Council, of the motivations of other members. This discussion evidently arose in part because of one councilman's concerns about a potential nominee to the City's Ethics Board." Letter Opinion at p. 3.

The Chancery Court rejected the City's argument that the "Protocol" portion of the executive session fell within the "Personnel" exception to FOIA. The Court found that during the "Protocol," no personnel file "was discussed or circulated among Council members . . . And certainly no disclosures of confidential information about individual members of the Council or employees of the City occurred . . ." Letter Opinion at pp. 6-7. The discussion during the Protocol "easily qualified" as "'public business.' Council members were engaged in a frank debate over a matter of public policy about which members of the public have a right to be informed as a means both to observe the performance of their public officials and, perhaps, to better understand the decisions that they make." Letter Opinion at p. 7.

The Chancery Court believed that the "members of the Council acted honestly and in good faith in convening the executive session and in undertaking a discussion of both personnel issues and Council protocol issues." Letter Opinion at pp. 8-9. Nevertheless, the Court held that "the nonpersonnel matters discussed during the executive session were 'public business' and should have been discussed fully and openly during the June 9 meeting." Id. at p. 9.

Pertinent Statutes

FOIA excepts from the definition of "public record" any "record of discussions held in executive session pursuant to subsections (b) and (c) of Section 10004 of this title;....." 29 Del.C. Section 10002(d))(10). Subsection (b) of Section 10004 authorizes a public body to go into executive session for any of nine reasons, including "personnel matters." See 29 Del.C. Section 10004(b)(9).

In the Chancery Court litigation, the Court demarcated what portions of the June 9, 1997 executive session were within the "personnel" exception under FOIA. The Council "Protocol" portion of the meeting was not within that

exception, so any minutes of that portion of the meeting are "public records" under FOIA and must be made available for inspection and copying upon request by a citizen.

As for the portion of the minutes dealing with "personnel" matters, a public body has discretion under FOIA to make minutes of executive session available to the public if it determines that public disclosure would no longer "defeat the lawful purpose for the executive session." 29 Del.C. Section 10004(f).

Legal Analysis

It is difficult to segregate the FOIA issue raised by your complaint from the procedure by which the Council, historically or on ad hoc basis, decides whether to release minutes of executive session to the public. The City argues that its policies and procedures regarding the release of confidential is not governed by FOIA because the City has discretion to decide whether disclosure of the minutes of an executive sessions would no longer "defeat the lawful purpose for the executive session." Irrespective of the Council's procedural requirements, however, FOIA is implicated if the process works to deny any citizen reasonable access to records that can be disclosed under FOIA.

Your request for the minutes of the June 9, 1997 meeting was forestalled by the Chancery Court litigation until the Court ruled in your favor on March 18, 1998. The City then decided to release the pages of the minutes of the "Protocol" section of the June 9, 1997 meeting. On March 31, 1998, you then renewed your request for the minutes, not only for the "Protocol" portion, but also for the portion dealing with personnel matters. Under Section 10004(f) of FOIA, the City had discretion to release the section of minutes regarding personnel matters if it believed that the personal privacy of the individual(s) involved would not be compromised. You also asked for the minutes of executive sessions held on July 14 and September 22, 1997. Those minutes were not at issue in the Chancery Court litigation.

By memorandum dated March 31, 1998, the City Secretary denied your request for the minutes of the three executive sessions, citing a memorandum dated June 18, 1997 ("[o]nce Council as a whole, and/or its legal counsel, decides the release of these minutes will not compromise the confidential nature of the topic discussed, I will then release them as directed"). Apparently, it is the City's position that it was then incumbent upon you to cause the Council to place on its agenda a vote to decide whether to release the minutes of the June 9, 1997 meeting per your request under FOIA.

Subsequently, another citizen, Helen Shurtleff, made a request for the personnel portions of the June 9, 1997 executive session minutes. At its meeting on July 27, 1998, the Council voted unanimously to release to Ms. Shurtleff the first four pages of the minutes dealing with personnel

matters.

FOIA does not prescribe any procedures by which a public body determines whether disclosure of the minutes would "no longer defeat the purpose" of the executive session. Since the decision is discretionary, a public body could, as long as the need for protection of the records exists, follow a uniform rule of not disclosing the minutes of executive session under any circumstances. However, once the public body determines that disclosure would no longer defeat the purpose of the executive session and that the record may be publicly disclosed, availability must be permitted in a consistent and fair manner.

"When the agency exercises its permissive disclosure authority, public inspection follows." Black Panther Party v. Kehoe, 42 Cal.App.3d 645 (1974). The public records laws do not permit a government agency "to indulge in selective disclosure . . . Records are completely public or completely confidential. The Public Records Act denies public officials any power to pick and choose the recipients of disclosure." Id. at 656.

The City tries to distinguish between Ms. Shurtleff, who it claims "made a formal request for the minutes" of the June 9, 1997 meeting, and you, who did not "move or request that the Council vote on public disclosure of the 'non-protocol' personnel matters discussed on June 9, 1997." This distinction is untenable. FOIA only requires a citizen to request reasonable access to inspect and copy records. If a request is made to copy minutes of an executive session, it is not incumbent upon the citizen to frame that request using particular words of art or to ask for a vote by the public body to decide whether disclosure would "no longer defeat" the purpose of the executive session. The FOIA request itself triggers the requirement that the public body follow its normal procedures to determine whether the records may be made available to the public.

We do not find anything in the record provided to us to show that your request for the minutes of the January 9, 1997 executive session was any different than Ms. Shurtleff's. Once the Council decided to release the complete minutes to Ms. Shurtleff, the minutes became a public record for all purposes and should have been provided to you as well.

We do not decide the question of access to or for copies of the minutes of the executive session meetings on July 14 and September 22, 1997. There is no evidence in any of the documents submitted to our office in connection with this complaint to suggest that the reason for going into executive session on those dates was not authorized by statute, or that the City has released copies of the minutes of those two meetings to any other citizen. In fact, the city secretary's memorandum of March 31, 1998 incorporates a June 18, 1997 memorandum to you setting forth the policy and procedure which must be followed to obtain public access to the minutes. Since the Council has not voted in accordance with its policy to make those minutes public, there is no

FOIA violation as to the Council's refusal to provide the minutes of the meetings of July 14 and September 22, 1997 to you.

Conclusion

Based on your complaint, the City's responses, your reply, and the documents provided to us by both parties, we determine that the City violated the public records provisions of FOIA by not providing you with a complete copy of the minutes of the executive session held on June 9, 1997 after the Chancery Court issued its Letter Opinion dated March 17, 1998, in light of the Council's decision to make the same minutes available to Ms. Shurtleff. To remedy that FOIA violation, we direct the City to provide you with a copy of those minutes within thirty days of the date of this letter.

Very truly yours,
W. Michael Tupman
Deputy Attorney General

Approved

Michael F. Rich
State Solicitor

DEPARTMENT OF EDUCATION

Senate Bill No. 250, Section 10: The Department of Education shall promulgate the rules and regulations necessary to implement this Act in an orderly fashion that provides adequate lead time for school districts to align their practices, plans, and policies with the requirements of this Act. Within 150 days after enactment, the Department shall publish a master schedule for the regulations required under this Act which will indicate when anticipated drafts will be available and when State Board of Education consideration of such regulations is anticipated.

Senate Bill Substitute #1 to Senate Bill 250**Regulatory Action Required by the Department of Education**

SECTION OF THE ACCOUNTABILITY LEGISLATION FROM 14 <u>DEL.C.</u>	REGULATIONS NECESSARY TO IMPLEMENT THE LEGISLATION	TIME LINE FOR AVAILABLE DRAFTS OF REGULATIONS AND CONSIDERATION BY THE STATE BOARD
Section 152, State High School Diploma Requirements	Establish the level of performance in reading, writing, mathematics, science and social studies necessary to graduate from high school.	September 1999-December 1999 for reading, writing and mathematics. September 2002-December 2002 for science and social studies.
	<u>May</u> establish the level of performance required in reading, writing, mathematics, science and social studies for a state distinguished achievement diploma and may include other criteria.	September 1999-December 1999 for reading, writing and mathematics. September 2002-December 2002 for science and social studies.
Section 153, Matriculation and Academic Promotion Requirements	Provide appropriate accommodations for administering the assessment to students with disabilities to address the academic improvement activities required of students whose performance is inadequate to demonstrate grade level proficiency.	April 1999-June 1999
	Ensure that assessments are administered in accordance with security procedures.	April 1999-June 1999

	Name and define the five levels of individual student performance relative to the state content standards in reading, writing, mathematics, science and social studies.	September 1999-December 1999 for reading, writing and mathematics. September 2002-December 2002 for science and social studies to define the levels of individual performance needed to calculate school and district performance levels.
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SECTION OF THE ACCOUNTABILITY LEGISLATION FROM 14 DEL. C.	REGULATIONS NECESSARY TO IMPLEMENT THE LEGISLATION	TIME LINE FOR AVAILABLE DRAFTS OF REGULATIONS AND CONSIDERATION BY THE STATE BOARD
	Define the term "grade level proficiency".	September 1999-December 1999
	<u>May</u> specify the role of other individual student indicators in determining a student's performance level.	September 1999-December 1999
	Establish a program to recognize superior and proficient performance on the state assessments in reading, writing, mathematics, science and social studies.	September 1999-December 1999
	Define the appropriate action steps for students in grades 3, 5, 8, and 10, whose performance on the reading assessment is either approaching grade level, below or far below grade level performance.	September 1999-December 1999
	Define the appropriate action steps for students in grades 8 and 10, whose performance on the mathematics assessment is either approaching grade level, below or far below grade level performance.	September 1999-December 1999

SECTION OF THE ACCOUNTABILITY LEGISLATION FROM 14 DEL. C.	REGULATIONS NECESSARY TO IMPLEMENT THE LEGISLATION	TIME LINE FOR AVAILABLE DRAFTS OF REGULATIONS AND CONSIDERATION BY THE STATE BOARD
Section 154, School Accountability for Academic Performance	Ensure that all eligible students take the state assessments.	April 1999-June 1999
	Establish an equitable composite scoring system for schools with two assessment grades.	September 2000-December 2000
	Establish criteria for the determination of whether a school is eligible for recognition for superior performance or is subject to improvement and accountability activities.	September 2000-December 2000
	Determine the weight to be given each subject tested by the assessments in calculating the composite score for each building.	January 2001-March 2001
	Develop an appeal process for those schools who seek to challenge their accreditation classification.	January 2001-March 2001
Section 155, School District and School Board Accountability for Academic Performance	Establish criteria for the determination of whether a school district is eligible for recognition for superior performance or is subject to improvement and accountability activities.	September 2000-December 2000
	Develop an appeal process for those districts who seek to challenge their accreditation classification.	January 2001-March 2001

For further information, contact Carol O'Neill Mayhew.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

1. TITLE OF THE REGULATIONS:

This is not a regulation, but is a formalization of a commitment that the State "intends to forbear" from adopting a California Motor Vehicle Control Program, sometimes called the "California Car Program", until 2006.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

About a year ago, (then) Secretary Tulou committed to not adopting a California car option, and this process, called a SIP revision, formalizes that commitment. The Department of Natural Resources and Environmental Control is using the DE Register as a vehicle to address the public outreach aspect of this commitment. There should be no issues involved with this commitment, since the State is only committing to take no action, rather than committing to take an action.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. , Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Provided in the News Journal and Delaware State News.

7. PREPARED BY:

Raymond H. Malenfant 302-730-4791

**Delaware's State Implementation Plan (SIP) Revision
For the Implementation of the National Low Emission
Vehicle (NLEV) Program**

On June 6, 1997, in recognition of the progress made between the twelve States and the District of Columbia which comprise the northeast Ozone Transport Commission (the OTC States) and the automobile manufacturers in developing an NLEV program, the EPA finalized the main regulatory framework rules for the NLEV program. For the details of this action, see 62 Fed. Reg. 31192. On January 7, 1998, EPA finalized its supplemental NLEV program rules addressing the reciprocal commitments necessary to

effectuate the NLEV program. See 63 Fed. Reg. 926. These rules established voluntary exhaust emissions standards for new light-duty vehicles that are not quite as stringent as those of the California Low Emission Vehicle (CAL-LEV) program. The CAL-LEV program was provided as an option to any State under Section 177 of the Clean Air Act as Amended in 1990, which is nonattainment of the ozone standard. The EPA has determined that implementation of these voluntary standards on a national basis under the NLEV program would provide emissions benefits to the OTC States substantially equivalent to those obtainable from the implementation of the CAL-LEV program in all of the OTC States (the OTC-LEV program), due to the expanse of the program. Further, the standards, which are applicable in the OTC States starting with the 1999 model year and in the remaining states except for California starting with the 2001 model year, are more stringent than those standards that the EPA is authorized to mandate for implementation prior to the 2004 model year. Generally, this program will be in effect until 2006.

By letter dated January 14, 1998, Governor Thomas Carper advised EPA Administrator Carol Browner of Delaware's commitment to the NLEV program. The letter also directed Secretary Tulou to complete the State's opt-in by taking the necessary steps to adopt appropriate regulations and submit the requisite state implementation plan (SIP) revision committing the State to NLEV in accordance with the EPA NLEV regulations. These EPA NLEV regulations specify that the states shall submit their SIP revisions to the EPA by March 1, 1999. This action allows for more substantive public awareness than the singular action taken by the Governor to participate in the NLEV Program. Any action more stringent than the action taken herein is expected to require specific authority by the Legislature of the State of Delaware.

On March 2, 1998, after having received notifications from all manufacturers that they voluntarily opted into the NLEV program, the EPA made its finding that the NLEV program is in effect starting in the OTC States with the 1999 model year and in the remainder of the Nation (except for California) with the 2001 model year. See 63 Fed. Reg. 11374.

Social Impact

Implementation of the NLEV program by EPA will significantly aid the State of Delaware in its efforts to achieve and maintain the NAAQS for ozone by reducing the in-use emissions of air contaminants from gasoline-fueled motor vehicles, and thereby make the air in Delaware more healthful than would otherwise be possible.

Motor vehicles are significant contributors of carbon monoxide, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). In the presence of sunlight, VOCs, NO_x

and other compounds in the ambient air react to form ozone. VOCs are a subcategory of a much broader spectrum of organic chemical compounds, including hydrocarbons (HCs). HCs are compounds composed of only hydrogen and carbon atoms.

Carbon monoxide is a poisonous gas at certain threshold levels. It is absorbed into the bloodstream and may have both direct and indirect effects on the cardiovascular system. This poisonous gas interferes with the oxygen-carrying ability of the blood. Exposure to CO aggravates angina and other aspects of coronary heart disease and decreases exercise tolerance in persons with cardiovascular problems. In fetuses, infants, elderly persons, and individuals with respiratory diseases, elevated levels of CO are also a serious health risk.

NO_x by themselves exhibit serious human health effects. For example, although nitric oxide (NO) itself is a relatively nonirritating gas, it is readily oxidized to nitrogen dioxide (NO₂), which can damage respiratory defense mechanisms, allowing bacteria to proliferate and invade the lung tissue. NO_x cause irritation to the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, bronchitis, and pneumonia. NO_x also react chemically in the air to form nitric acid, which contributes to acid rain formation.

Some VOCs, including benzene, formaldehyde and 1,3-butadiene, are classified as air toxics. They have been associated with the onset of cancer and other adverse health effects. As is mentioned above, VOCs participate in photochemical reactions with NO_x to create ozone and other oxidants harmful to health. Ground level ozone is a major public health problem in Delaware. Studies have proven that ozone has severe and debilitating effects on lung capacity and can have detrimental effects on respiration. A series of EPA studies indicate that ozone exposures as low as 0.08 ppm, which is the newly-promulgated 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, can impair lung function. Even at low levels, ozone can cause average humans to experience breathing difficulty, chest pains, coughing and irritation to the nose, throat and eyes. For individuals who already experience respiratory problems or who are predisposed to respiratory ailments, these symptoms can become much more severe, forcing those individuals to alter their lifestyles to avoid unnecessary exposure.

In addition, chronic ozone exposure studies performed on laboratory animals indicate that long-term exposure to ozone affects lung physiology and morphology. These studies suggest that humans exposed to ozone over prolonged periods of time can experience chronic respiratory injuries resulting in premature or accelerated aging of human lung tissue.

During the May to October ozone season of this year,

the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone was exceeded on 34 days, statewide, with 21 of these same days recording exceedances at more than one of the State's six (6) ozone monitoring sites. It is clear, therefore, that the ozone levels in Delaware must be reduced in order to protect the health and welfare of the residents of the State. While the State has never violated the NAAQS for CO, it is critical that we continue to maintain this important health standard.

Economic Impact

It is expected that the cost of some motor vehicles produced under the NLEV Program may increase slightly over a comparable vehicle not produced under the NLEV Program, but that differential, if any, will only impact model year (MY) 1999 and 2000 vehicles. Beginning with MY 2001, all vehicles produced nationwide will be subject to the NLEV program. The early introduction of the NLEV to the northeast is in recognition of that area's experience with higher ozone concentrations that the balance of the nation, except for California.

Environmental Impact

The implementation of these amendments will have a positive impact on the environment by reducing the emissions of VOCs, and NO_x, thereby reducing the formation of ground-level ozone, and by reducing the emissions of CO. The primary impact of both ground-level ozone and CO is upon human health and well-being. In addition to human health effects, studies have shown that increasing ozone levels damage foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this type of damage to sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables and grain. Considering Delaware's vast agricultural activity, this is an important factor in determining overall impact.

Decreased ozone levels will also reduce the level of the degradation of various man-made materials, such as rubber, plastics, dyes and paints. This degradation is caused by the oxidizing properties of ozone. However, if the photochemical production of ground-level ozone can be limited, as it will be with the implementation of the proposed amendments, this degradation can be significantly reduced.

Regulatory Requirements

This program is not a regulation in any traditional sense. As stated earlier, the OTC requested EPA to adopt such a program as this NLEV Program. EPA agreed to this request

and promulgated the program which is now in effect. The action taken herein utilizes the traditional SIP process to assure that public awareness of the program has been accomplished. It is implicit in the "commitments" made by Delaware in this action that Delaware recognizes its authority to adopt a motor vehicle emission control program identical to that of California, but also recognizes that the NLEV program is "substantially equivalent" to those same California emission standards. For that reason, and for the reason that the NLEV program will not require any State resources to implement the program, Delaware has chosen to participate in the NLEV Program.

Full text of the proposal follows. The entire text is new and therefor displayed in the conventional *bold italics* type. This action will not be included in the *Delaware Regulations Governing the Control of Air Pollution* since there is no regulatory impact on the public.

Delaware's National Low Emission Vehicle (NLEV) Program

Section 1 - Applicability

The environmental benefits of this federal program will be realized in all counties in the State of Delaware.

Section 2 - Definitions

The following terms, when used in this program description, shall have the following meanings:

NLEV Program or **National Low Emission Vehicle Program** means a federally enforceable, voluntary nationwide clean car program designed to reduce smog and other pollution from new motor vehicles and that would achieve emission reductions from new motor vehicles in the Ozone Transport Region equivalent to or greater than would be achieved by the adoption of the CAL-LEV Program by all the OTC states.

Section 3 – Program Participation

(a) For the duration of Delaware's participation in NLEV, manufacturers may comply with NLEV or equally stringent mandatory Federal standards in lieu of compliance with any program, including the provisions of this subchapter and including any mandates for sales of ZEVs, adopted by the State pursuant to the authority provided in ' 177 of the Clean Air Act (CAA), 42 U.S.C. ' ' 7401 et seq., applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3,

Chapter 1, Article 1, ' 1900, incorporated herein by reference.

(b) Delaware's participation in NLEV extends until the commencement of model year 2006, except as provided in 40 C.F.R. 86.1707. If, no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R, that apply to new motor vehicles in model year 2004, 2005 or 2006, the State's participation in NLEV extends only until the commencement of model year 2004, except as provided in 40 C.F.R. ' 86.1707.

(c) If a covered manufacturer, as defined at 40 C.F.R. 86.1702, opts out of the NLEV program pursuant to the EPA NLEV regulations at 40 C.F.R. ' 86.1707, the transition from NLEV requirements to any State Clean Air Act ' 177 Program applicable to passenger cars, light-duty trucks up through 6000 pounds GVWR, and/or medium-duty vehicles from 6001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, ' 1900, incorporated herein by reference will proceed in accordance with the EPA NLEV regulations at 40 C.F.R. ' 86.1707.

Section 4 – Commitments

(a) The State commits to support NLEV as an acceptable alternative to the State's Section 177 Program for the duration of the State's participation in NLEV.

(b) The State recognizes that its commitment to NLEV is necessary to ensure that NLEV remain in effect.

(c) The State is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at ' 110 and EPA regulations at 40 C.F.R. Part 86 and 40 C.F.R. Parts 51 and 52.

Section 5 – Agreement to Forbear Adoption of Replacement Programs

For the duration of Delaware's participation in NLEV, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R that apply to new motor vehicles in model year 2004, 2005, or 2006, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.

Delaware River Basin Commission

Notice of Proposed Rulemaking

Proposed Amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania with respect to the establishment of numerical ground water withdrawal limits for 62 subbasins which are entirely or partially within the Ground Water Protected Area. Limits, based upon baseflow frequency analyses, were initially specified for the 14 subbasins in the Neshaminy Creek Basin. Limits for the remaining 62 subbasins are based upon additional baseflow frequency analyses provided by the U.S. Geological Survey in 1998. Although the limits within the Neshaminy Creek Basin remain unchanged, the withdrawal limits for the entire protected area are presented in this notice.

DATES: The public hearing will be held on Tuesday, March 9, 1999 beginning at 1:00 p.m. and continuing until 5:00p.m., as long as there are people present wishing to testify. The hearing will resume at 7:00 p. m. and continue until 9:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearing. Persons wishing to testify at the hearing are requested to register with the Secretary in advance of the hearing.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearings will be held in the Hearing Room of the Pennsylvania Department of Environmental Protection's Southeastern Regional Office at 555 E. North Lane, Lee Park Suite 6010, Conshohocken, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania may be obtained by contacting Susan M. Weisman, Commission Secretary, at (609) 883-9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania were adopted in 1980 to prevent depletion of ground water, protect the interests and rights of lawful users of the same water source, and balance and reconcile alternative and conflicting uses of limited water resources in the area. Lowered water tables resulting from withdrawals in excess of recharge rates have led to reduction of flows in some perennial streams in the region and have dried up some stream reaches which previously flowed all year. Such reductions in base flow interfere with instream and downstream water uses, adversely affect fisheries and aquatic life, and threaten to reduce the capacity of streams in the region to assimilate pollutants.

On January 28, 1998, the Commission adopted amendments to the Ground Water Protected Area Regulations which established a two-tiered system of withdrawal limits. The first tier serves as a warning that a subbasin is "potentially stressed". In potentially stressed subbasins, applicants for new or expanded ground water withdrawals are required to implement one or more programs to mitigate adverse impacts of additional ground water withdrawals. Acceptable programs include: conjunctive use of ground water and surface water; expanded water conservation; control of ground water infiltration to the receiving sewer systems; and artificial recharge and spray irrigation. The second tier serves as the maximum withdrawal limit. The Commission seeks to prevent ground water withdrawals from exceeding the maximum withdrawal limit.

The regulations also provide incentives for holders of existing DRBC docket and protected area permits to implement the above-cited conjunctive use and conservation programs to mitigate the adverse impacts of their ground water withdrawals. If docket or permit holders successfully implement one or both programs, the Commission could extend the docket or permit duration for up to ten years.

The regulations also specify administrative criteria for issuing and review of dockets and permits as well as protocol for updating and revising withdrawal limits to provide additional protection for streams designated by the Commonwealth of Pennsylvania as "high quality" or "exceptional value", or to correspond with any integrated resources plans adopted by municipalities for subbasins.

The ground water study which provided the basis for the withdrawal limits for the subbasins in the Neshaminy Creek Basin was prepared by the U. S. Geological Survey in cooperation with the Commission and is entitled "Water-Use Analysis Program for the Nesharniny Creek Basin, Bucks and Montgomery Counties, Pennsylvania." The U S. Geological Survey was contracted by the Commission to

prepare, a similar study to investigate the withdrawal limits for the remaining subbasins in the protected area. The results of both studies are recorded on CD-ROM which is available from the Commission. Specific software, the Access database and ArcView from ESRI are required to view the CD-ROM. To review the CD-ROM at the Commission's offices, please contact Judith Strong, at (609) 883-9500 ext. 263 for an appointment. To order the CD-ROM at a cost of \$10, please contact Carolyn Hartman at (609)883-9500 ext. 249. To review the CD-ROM at locations within the protected area, please contact Susan M. Weisman at (609) 883-9500 ext. 203.

The subject of the hearing will be as follows:

Amendment to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania Relating to the Establishment of Numerical Ground Water Withdrawal Limits for Subbasins in the Protected Area.

It is proposed to:

1. Amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania as follows:

Subsection 6.i.(3) is hereby revised to read as follows:

(3) The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

Subbasin	Neshaminy Creek Basin	
	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
West Branch Neshaminy Creek Basin	1054	1405
Pine Run Basin	596	795
North Branch Neshaminy Creek	853	1131
Doylestown Subbasin Neshaminy Creek	710	946
Warwick Subbasin Neshaminy Creek	889	1185
Warrington Subbasin Little Neshaminy Creek	673	776
Park Creek Basin	582	776
Warminster Subbasin Little Neshaminy Creek	1018	1355
Mill Creek Basin	1174	1565
Northampton Subbasin Neshaminy Creek	596	794
Newtown Creek	298	397
Core Creek Basin	494	658
Ironworks Creek Basin	326	434
Lower Section Subbasin Neshaminy Creek	3026	4034

Subbasin	Schuylkill River Basin	
	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
Hay Creek	974	1299
Lower Reach Manatawny-Ironstone Creek	1811	2414
Pigeon Creek	611	815
Schuylkill-Crow Creek	1157	1543
Schuylkill-Mingo Creek	671	895
Schuylkill-Plymouth-Mill Creeks	4446	5929
Schuylkill-Sixpenny Creek	1490	1987
Schuylkill-Sprogels Run	1091	1455
Schuylkill-Stony Creek	687	916
Schuylkill-Trout Creek	1082	1443
Stony Creek	1242	1655
Valley Creek	1885	2486

Subbasin	French and Pickering Creek Subbasins	
	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
Lower Reach French Creek	634	845
Lower Reach Pickering Creek	1716	2288
Middle Reach French Creek	1608	2145
South Branch French Creek	1044	1393
Upper Reach French Creek	1295	1726
Upper Reach Pickering Creek	1358	1811

Subbasin	Perkiomen and Skippack Creek Subbasins	
	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
East Branch Perkiomen-Indian Creeks	633	844
East Branch Perkiomen-Mill Creeks	720	961
East Branch Perkiomen-Morris Run	1214	1619
Hosensack-Indian Creeks	1257	1676
Lower Reach Skippack Creek	1069	1426
Perkiomen-Deep Creeks	1047	1396
Perkiomen-Lodal Creeks	1200	1600
Perkiomen-Macoby Creek	1252	1669
Swamp-Middle Creeks	1423	1898
Swamp-Minister Creeks	547	730
Swamp-Scioto Creeks	746	994
Towarnencin Creek	466	622
Unarni-Licking Creeks	992	1322
Unami-Ridge Valley Creeks	1068	1424
Upper Reach Perkiomen Creek	1223	1631
Upper Reach Skippack Creek	813	1084
West Branch Perkiomen Creek	1566	2088

Subbasin	Delaware River Basin	
	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
Jericho Creek	421	562
Mill Creek	1600	2134

	Potentially Stressed (mgy)	Withdrawal Limit (mgy)
Paunacussing Creek	513	684
Pidcock Creek	563	751
Upper Reach Cobbs Creek	871	1161
Upper Reach Crum Creek	1290	1721
Upper Reach Darby Creek	1625	2167
Upper Reach East Branch Chester Creek	1865	2487
Upper Reach Frankford Creek	1414	1886
Upper Reach Poquessing Creek	1008	1344
Upper Reach Ridley Creek	1707	2275

Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and ground water monitoring or in accordance with (2).

- This regulation shall be effective immediately.
Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman
Secretary
January 4, 1999

Tohickon Subbasin

Subbasin

Tohickon-Beaver-Morgan Creeks	1156	1541
Tohickon-Deep Run	956	1274
Tohickon-Geddes-Cabin Runs	602	803
Tohickon-Lake Nockamixon	556	741
Tohickon-Three Mile Run	726	968

Pennypack and Wissahickon Subbasins

Subbasin

Lower Reach Wissahickon Creek	2750	3666
Upper Reach Wissahickon Creek	1302	1738
Middle Reach Pennypack Creek	1295	1727
Upper Reach Pennypack Creek	1358	1811

Brandywine Creek Subbasin

Subbasin

East Branch Brandywine-Taylor Run	1054	1405
Middle Reach Brandywine Creek	823	1098
Upper Reach Brandywine Creek	1614	2153
West Branch Brandywine-Beaver Run	2110	2813
West Branch Brandywine-Broad Run	2380	3173
West Valley Creek	1673	2231

Lehigh Subbasin

Subbasin

Upper Reach Saucon Creek	946	1262
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* mgy means million gallons per year

**DELAWARE SOLID WASTE
AUTHORITY**

PUBLIC NOTICE

Pursuant to 7 Delaware Code, Section 6403 (i), 6403 (j), 6403 (k), 6403 (l), 6406 (a) (11), 6406 (a) (13), 6421 and other pertinent provisions of 7 Delaware Code, Chapter 64, the Delaware Solid Waste Authority (DSWA) will conduct a hearing to consider an amendment to the following documents:

- (a) Statewide Solid Waste Management Plan (adopted May, 1994), and
- (b) Regulations of the Delaware Solid Waste Authority (adopted October 1997)
- (c) Differential Disposal Fee Program (new fee structure)

The hearing is to provide opportunity for public comment on the proposed amendments. The public record will close at the close of the Hearing.

The hearing will be held February 23, 1999 at 7:00 p.m. in the Public Meeting Room of the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, DE 19903.

Copies of the proposed amendments will be available February 1, 1999 from the Delaware Solid Waste Authority upon request. The proposed amendments will also be published in the February 1, 1999 edition of the "Register of Regulations."

If you have any questions regarding the hearing, please contact T. E. Houska, Chief of Administrative Services, Delaware Solid Waste Authority, P.O. Box 455, Dover, Delaware 19903-0455 or call (302) 739-5361. Mr. Houska can also be reached by e-mail: teh@dswa.com.

**STATE FIRE PREVENTION
COMMISSION**

STATE FIRE MARSHALLS OFFICE

NOTICE OF PUBLIC HEARING

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del.C. §6603 and 29 Del.C. 101 on Tuesday, February 16, 1999, at 2:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Part V, Chapter 5 Standard for the Marking, Identification, and Accessibility Of Fire Lanes, Exits, Fire Hydrants, Sprinkler, and Standpipe Connections.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or the Administrative Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located in the First Federal Plaza Building, 704 King Street, Suite 200, Wilmington, Delaware, 19801, and Road 321, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on February 16, 1999, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE BOARD OF OCCUPATIONAL
THERAPY**

Notice of Public Hearing

Please Take Notice, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. §2007(a)(1), the Delaware Board of Occupational Therapy has developed and proposes to adopt comprehensive Rules and Regulations. The regulations will describe the Board's organization, operations and rules of procedure, the process and requirements for licensure and certain standards of conduct applicable to the practice of occupational therapy.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, March 17, 1999 at 4:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Written comments should be submitted to the Board in care of Mary Paskey at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Mary Paskey at the above address or by calling (302) 739-4522, ext. 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DELAWARE REAL ESTATE COMMISSION

Notice of Public Hearing

The Delaware Real Estate Commission, in accordance with 24 Delaware Code, Section 2905(a)(1) and 29 Delaware Code, Section 10115 of the Administrative Procedures Act, hereby give notice that it shall hold a public hearing on March 18, 1999 at 1:30 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding revisions of the rules and regulations: Rule I.C.I (Responsibility). Add sentence specifying responsibility of broker to see that all agents affiliated with his/her office are currently licensed; Rule II.A.2. Non-substantive changes updating the title of the education guidelines. Rule XII. (Inducements). Add subsection B permitting a broker or salesperson who must be a resident or non-resident licensee to give a rebate/discount/any other thing of value to a purchaser or seller and C which requires the licensee to disclose to his or her principal any rebate or discount made to buyer.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed changes may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

DELAWARE GAMING CONTROL BOARD

The Delaware Gaming Control Board proposed amendments to the Bingo Regulations and charitable Gambling Regulations. The Board proposes these regulations pursuant to 28 Del. C. §1122 and 29 Del. C. §10111. A copy of the proposed regulations are attached to this letter.

The public may obtain copies of the existing regulations and proposed regulations from the Board's office, Division of Professional Regulations, c/o Lynn Houska, Cannon Building, Suite #203, 861 Silver Lake Boulevard, Dover, DE 19904, phone (302) 739-4522. The Board will accept written comments from February 1, 1999, until March 2, 1999. A public hearing will be held at the Board's monthly

meeting on March 3, 1999, at 1:00 p.m. at the Common Building, second floor conference room.

The Board proposes to amend Charitable Gambling Regulation 3.12 to provide for filing of an after occasion report within fifteen (15) days of the last day of the function consistent with 28 Del. C. §1140. The Board proposes to amend Bingo Regulation 1.04(7) to further define the cookie jar bingo games by providing: 1) that no licensee can start a third cookie jar bingo jackpot without first giving away their first cookie jar bingo jackpot; and, 2) if a licensee has not given away a first cookie jar jackpot as required, then the licensee must hold a separate bingo coverall game as the last game to award the jackpot.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, February 18, 1999 at 11:00 a.m.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Notice of Public Hearing

The Office of Vital Statistics, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss proposed Regulations for the Vital Statistics Code (Title XVI, Chapter 31, Delaware Code). These proposed regulations describe procedures the Office of Vital Statistics will utilize in registering, maintaining, and releasing vital events for the State of Delaware.

This public hearing will be held on Monday, March 15, 1999 beginning at 10:00 a.m. in Room 309, Jesse Cooper Building, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

Mr. Michael Richards
Office of Vital Statistics
Division of Public Health
Jesse Cooper Building
P. O. Box 637
Dover, Delaware 19903
Telephone: 302.739.4721

Anyone wishing to present their oral comments at this hearing should contact Mr. Michael Richards at (302) 577-

6666 by March 8, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by March 19, 1999 to:

Mr. Michael Richards, Director
Office of Vital Statistics
Division of Public Health
PO Box 637
Dover, Delaware 19903

DIVISION OF MENTAL RETARDATION

Public Notice **DMR Eligibility Criteria**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Mental Retardation is amending its eligibility criteria.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than March 3, 1999, at the DMR Administrative Office, Jesse Cooper Building, Federal Street, Dover, DE 19903, attention Susan Morrison Smith. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Division of Mental Retardation office will be available for public inspection in the DMR Administrative Office at the address given above. Please call (302) 739-4881, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

AIR QUALITY MANAGEMENT SECTION

REGISTER NOTICE

1. Title of the Regulations:

Amendments to the Delaware 1999 Rate-of-progress Plan for Kent and New Castle Counties: for Demonstrating Progress Toward Attainment of the National Ambient Air Quality Standard for Ground Level Ozone

2. Brief Synopsis of the Subject, Substance and Issues:

The Amendments consist of 1) updated calculations of emission reduction credits resulting from the imposition of facility caps on NOx emissions as required by Air Quality Regulation #37; 2) the removal from the original Plan of the peak ozone season equivalent of 8.5 tons per year of credited reductions attributed to emission controls on the spill diversion tank at Motiva Enterprises' waste water treatment system; 3) the inclusion of a contingency plan to cover the Clean Air Act requirement for a minimum of an additional 3 percent reduction held in reserve in case of failure to meet the emission target levels in 1999.

3. Possible Terms of The Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

- 7 Del. C., Chapter 60 Section 6010
- Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. Notice of Public Comment:

March 16, 1999 6:00 p.m. DNREC Auditorium, 89 Kings Highway, Dover, DE

7. Prepared by:

Alfred R. Deramo, Program Manager (302) 739-4791
January 15, 1999

DIVISION OF FISH AND WILDLIFE

Register Notice

1. Title of The Regulation:

Shellfish Regulations No. S-23 Lobster-pot Design; No. S-25 Lobster- Pot, Season and Limits for Commercial Lobster Pot License and S-26, Possession of V-notched Lobsters Prohibited.

2. Brief Synopsis of The Subject, Substance And Issues:

In order to comply with the requirements of Amendment 3 to the Interstate Fishery Management Plan for American Lobster, new lobster pot design criteria are required to allow

the escape of undersized lobsters, to allow any lobster to escape if a pot is lost and limit the size of pots. Mature female lobsters are marked and released by fishermen in New England when they are carrying eggs. The possession of these marked females with a V-notch in one of their tail flippers is prohibited in order to protect known mature female lobsters. It is also required that landing limits be implemented to prohibit the landing of more than 100 lobsters per one day trip or up to 500 per 5 day trip that are not taken by pots in the Exclusive Economic Zone (3-200 nautical miles in the Ocean).

3. Possible Terms of The Agency Action:
None
4. Statutory Basis or Legal Authority to Act:
§1902 (a)(5), 7 Del. C.
5. Other Regulations That May Be Affected by The Proposal:
None
6. Notice of Public Comment:
Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302) 739-3441, prior to 4:30 PM on Friday, March 5, 1999. A public hearing on these proposed amendments to Shellfish Regulation Nos. 23 and 25 and new Shellfish Regulation No.26 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday February 25, 1999.
7. Prepared by:
Charles A. Lesser(302)-739-3441 January 11, 1999

DIVISION OF FISH AND WILDLIFE

Register Notice

1. Title of The Regulation:
Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Season.
2. Brief Synopsis of The Subject, Substance And Issues:
In order to remain in compliance in 1999 with the Summer Flounder Fishery Management Plan, as amended, Delaware must reduce its recreational fishery harvest by 40% of the 1997 recreational harvest. There are several ways to accomplish this reduction. If Delaware retains the 15 inch minimum size limit and 8 fish creel limit for summer

flounder, a seasonal closure is required. There are four options for a closed season. If Delaware raises its minimum size limit to 16 inches and retains the 8 fish creel limit, a much shorter closed season is required. Lowering the creel limit will have a minimal effect on reducing the harvest.

The Division of Fish and Wildlife's preferred option is to retain the 15 inch minimum size limit and 8 fish creel limit and close the recreational and commercial hook and line season on January 1 through May 28 and again on September 12 through December 31. Other seasonal closure options that are the conservation equivalent of the preferred option are January 1 through July 13; August 9 through December 31 or July 15 through August 8.

Delaware's commercial hook and line fishery for summer flounder will continue to have the same minimum size limit, creel limit and seasonal closure(s) as the recreational fishery in order to keep commercial landings of summer flounder below Delaware's commercial quota of 11,100 pounds.

3. Possible Terms of The Agency Action:
Requirements in the Summer Flounder Fishery Management Plan require changes to reduce recreational harvest by 40% of the 1997 landings. If Delaware does not comply, the summer flounder fishery may be closed.
 4. Statutory Basis or Legal Authority to Act:
§903 (e)(2)(a), 7 Del. C.
 5. Other Regulations That May Be Affected by The Proposal:
None
 6. Notice of Public Comment:
Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302)-739-3441 prior to 4:30 PM on Friday, March 5, 1999. A public hearing on proposed amendments to TIDAL FINFISH REGULATION NO. 4 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday, February 25, 1999.
 7. Prepared by:
Charles A. Lesser(302)-739-3441 January 15, 1999
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DIVISION OF FISH AND WILDLIFE

Register Notice

1. Title of the Regulation:
Tidal Finfish Regulation No. 23 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas.
 2. Brief Synopsis of The Subject, Substance And Issues:
The fishing mortality rate on the black sea bass is under the target level described in the Black Sea Bass Fishery Management Plan. Therefore the recreational seasonal closure is no longer needed. The current seasonal closure of August 1 – August 15 for recreational fishermen will be dropped.
 3. Possible Terms of The Agency Action:
States musts comply with the minimum requirements of the Black Sea Bass Fishery Management Plan or face a closure of the fishery.
 4. Statutory Basis or Legal Authority to Act:
§ 903 (e)(2)(a), 7 Del. C.
 5. Other Regulations That May Be Affected by The Proposal:
None
 6. Notice of Public Comment:
Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 (302) 739-3441, prior to 4:30 PM on Friday, March 5, 1999. A public hearing on proposed amendments to TIDAL FINFISH REGULATION NO. 23 will be held in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Thursday, February 25, 1999.
 7. Prepared by:
Charles A. Lesser (302)739-3441 January 11,1999
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