

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

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

**GENERAL NOTICE**

**Secretary's Order No.: 2013-A-0007**

**Approving Final Revision to Delaware's State Implementation Plan (SIP) for the Implementation, Maintenance and Enforcement of the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS), Pursuant to the Requirements of Section 110(a)(2)(A)-(M) of the Federal Clean Air Act (CAA)**

**Date of Issuance: March 7, 2013**

**Effective Date of the Amendment: April 11, 2013**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). Effective April 12, 2010, the U.S. Environmental Protection Agency (EPA) promulgated a new NAAQS for the pollutant NO<sub>2</sub>. Because there have been NAAQSs in existence for many years that cover the pollutant NO<sub>2</sub>, the CAA 110 requirements are already substantially addressed in Delaware's SIP. The SIP revision being proposed by the Department at this time demonstrates how Delaware's SIP meets each requirement of Section 110(a)(2)(A)-(M) of the (CAA) for the 2010 NO<sub>2</sub> NAAQS.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the December 1, 2012 *Delaware Register of Regulations*, and held a public hearing on January 3, 2013. It should be noted that no public comment was received by the Department with regard to this proposed promulgation, and no members of the public attended the hearing held by the Department in this matter.

As noted above, effective April 12, 2010, the U.S. Environmental Protection Agency ("EPA") promulgated a new NAAQS for NO<sub>2</sub>. The level of the NAAQS was established at 100 parts per million (ppm), based on a 3-year average of the 98<sup>th</sup> percentile of the yearly distribution of 1-hour daily maximum concentrations. The CAA requires each State to submit to the EPA a SIP that provides for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. The SIP revision being proposed at this time is to fulfill this federal requirement relative to the 2010 NO<sub>2</sub> NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 11, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS), as attached to the Report as Appendix A.

**Findings and Discussion**

I find that the proposed revision to Delaware's aforementioned SIP is well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). With the adoption of this Order, Delaware will once again demonstrate that the contingency requirements of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on January 3, 2013;
- 3.) The Department held a public hearing on January 3, 2013, in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) should be adopted as final, thereby enabling Delaware to (1) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met; and (2) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the requirements of Section 110(a)(2)(A)-(M) of the federal Clean Air Act (CAA) for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

### **Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards (NAAQS)**

#### **State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For the 2010 Nitrogen Dioxide NAAQS February 11, 2013**

#### **1.0 Background**

Effective April 12, 2010, the Environmental Protection Agency (EPA) established a new 1-hour primary National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>) at a level of 100 parts per billion (ppb), based on a 3-year average of the 98<sup>th</sup> percentile of the yearly distribution of 1-hour daily maximum concentrations.<sup>1</sup> Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. This SIP revision fulfills this requirement relative to the 2010 NO<sub>2</sub> NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

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

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2010 NO<sub>2</sub> NAAQS. Under the heading "*Delaware's Plan*" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2010 NO<sub>2</sub> NAAQS is being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law<sup>2</sup>, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

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1. 75 FR 6474

2. Referred to in this document as "7 Del.C." followed by the specific section citation (e.g., §6005).

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2010 NO<sub>2</sub> NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

**Table - 110(a)(2)(A)-(M) Requirements Already Addressed in the Delaware SIP**

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	<p>For the 2010 NO<sub>2</sub> NAAQS, the following emission limitations and schedules are contained in Delaware's approved SIP.</p> <p>7 <b>DE Admin. Code</b> 1101<sup>a</sup>, Definitions And Administrative Principles</p> <p>7 <b>DE Admin Code</b> 1112, Control of Nitrogen Oxides Emissions</p> <p>7 <b>DE Admin Code</b> 1142, Section 1.0, Control of NOx Emissions from Industrial Boilers</p> <p>7 <b>DE Admin Code</b> 1142, Section 2.0, Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries</p> <p>7 <b>DE Admin Code</b> 1144, Control of Stationary Generator Emissions</p> <p>7 <b>DE Admin Code</b> 1146, Electric Generating Unit Multi-pollutant Regulation</p> <p>7 <b>DE Admin Code</b> 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions</p> <p>7 <b>DE Admin. Code</b> 1127, Stack Heights</p>	40 CFR 52.420(c)
§110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.	7 <b>DE Admin. Code</b> 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.	40 CFR 52.420(c)

Delaware implements its Construction and Operation Permit Program requirements under 7 **DE Admin. Code** 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the NO<sub>2</sub> NAAQS.

§110(a)(2)(C)

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

7 **DE Admin. Code** 1125 fulfills parts C and D of Title I of the CAA, governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the DE SIP. Under 1125 any major source or modification that results in a net significant increase of NO<sub>x</sub> (25 TPY in Kent and New Castle County; 40 TPY in Sussex County) must apply Lowest Achievable Emission Rate (LAER) technology to reduce NO<sub>x</sub> emissions, and must secure emission offsets such that there is a net air quality benefit. In addition, any 100/250 TPY source of NO<sub>x</sub> emissions is also subject to the attainment review provisions of Section 3.0 of 1125, PSD.

40 CFR 52.420(c)

7 **DE Admin. Code** 1102 provides for the evaluation and necessary regulation of any stationary source that emit equal to or greater than 0.2 lb of any air contaminate, including NO<sub>2</sub>, in any one day.

In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to 1102 and 1125.

§110(a)(2)(E)(iii)

(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;

The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because Delaware does not rely on localities for SIP implementation.

Require, as may be prescribed by the Administrator—

	(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,	§110(a)(2)(F)(i): Specific monitoring requirements are found in 7 <b>DE Admin. Code</b> 1103 and 1117. These requirements are included in Delaware's SIP.	
§110(a)(2)(F)	(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and	§110(a)(2)(F)(ii): Specific reporting requirements are found in 7 <b>DE Admin. Code</b> 1103 and 1117. These requirements are included in Delaware's SIP.	40 CFR 52.420(c)
	(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;	These regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2010 NO <sub>2</sub> NAAQS.	
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 <b>DE Admin. Code</b> 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware's SIP.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2010 NO <sub>2</sub> NAAQS.	
§110(a)(2)(J)	Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in 7 <b>DE Admin. Code</b> 1125, Preconstruction Review.	40 CFR 52.420(c)

a. Delaware's air quality regulations are codified in Delaware's administrative code, - Title 7 Natural Resources and Environmental Control, 1100 Air Quality Management Section. Citations are expressed in this document as "7 **DE Admin. Code**" followed by the specific subpart of 1100. All portions of the DE Admin. Code referred to in this document are already included in Delaware's SIP.

## 2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) for the 2010 NO<sub>2</sub> NAAQS, which have not been addressed in other SIP revisions. Each of the requirements of **§110(a)(2) of the CAA** (Subparagraphs A-M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

**(A) §110(a)(2)(A) Requirement:** Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

**Delaware's Plan:** Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated with the 2010 NO<sub>2</sub> NAAQS. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 **Del.C.**, Chapter 60. This authority is applicable to the 2010 NO<sub>2</sub> NAAQS.

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

**Delaware's Plan:** Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request,

makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2010 NO<sub>2</sub> NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports NO<sub>2</sub> concentrations from our monitoring site located in Wilmington near Martin Luther King Boulevard.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

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

**Delaware's Plan:** Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware, through its Division of Air Quality, exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

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

the applicable requirements of sections 126<sup>3</sup> and 115<sup>4</sup> (relating to interstate and international pollution abatement).

**Delaware's Plan:** Delaware's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS, to include the NO<sub>2</sub> NAAQS, and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- 7 **Del.C.**, §6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.
- 110(a)(2)(D)(i)(I): The pollutant NO<sub>2</sub> is a subset of the broader pollutant NO<sub>x</sub>. Delaware has submitted to the EPA prior SIP revisions that demonstrate all NO<sub>x</sub> emitting sources in Delaware are well controlled. In addition, on January 20, 2012, based on 2008-2010 air quality monitoring data, the U.S. Environmental Protection Agency determined that no area in the country is violating the 2010 NO<sub>2</sub> NAAQS. Given that EPA has determined no area of the country is violating the 2010 NO<sub>2</sub> NAAQS, Delaware emissions cannot significantly contribute to nonattainment in any area.
- All major stationary sources of NO<sub>2</sub> are subject to both Prevention of Significant Deterioration (PSD) and the Emission Offset Provisions (EOP) provisions of 7 **DE Admin. Code** 1125, Preconstruction Review (i.e., both the attainment and the nonattainment area permitting provisions). The requirements of 1125 ensure that no new or modified NO<sub>2</sub> emitting source will cause or contribute to non-attainment in any area.
- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the EOP and PSD requirements which are contained in Sections 2.0 and 3.0 of 7 **DE Admin. Code** 1125, Preconstruction Review.
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

**(E) §110(a)(2)(E) Requirement:** Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,<sup>5</sup> and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E)(iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

**Delaware's Plan:** For §110(a)(2)(E)(i), Delaware has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to the 2010 NO<sub>2</sub> NAAQS. DNREC does not believe that

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

there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines under 7 Del.C. Chapter 60. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

Delaware complies with the requirements of §110(a)(2)(E)(ii) through compliance with the applicable requirements of 29 Del.C., Ch. 58, "Laws Regulating the Conduct of Officers and Employees of the State." A public hearing on SIP revision detailing how the requirements of 29 Del.C., Ch. 58 satisfy this requirement, and that proposed to submit such requirements to the EPA for inclusion into the Delaware SIP, was held on October 23, 2012. This final document was submitted to the EPA as a SIP revision on January 11, 2013.

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

**Delaware's Plan:** Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of NO<sub>x</sub> (which includes NO<sub>2</sub>) emissions and emissions related-data from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

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

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;<sup>6</sup>

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

7 Del.C. § 6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 Del.C. §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 Del.C. §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 Del.C. §6018). Thus, it necessarily follows that any discharge of an air contaminant, including NO<sub>2</sub>, that would cause

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4. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

5. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

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

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

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

**Delaware's Plan:** This does not apply because no part of Delaware is designated nonattainment for the 2010 NO<sub>2</sub> NAAQS.

- (J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).<sup>7</sup>

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

- **7 DE Admin. Code 1132, Transportation Conformity,** provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomico MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to **7 Del.C. Chapters 29 and 60**, which include publication in the newspapers and in the *Delaware Register*, and which have allowed for comment by the both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the

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6. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

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

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

section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

- DNREC makes real-time and historical air quality information available on its Web site.
- PSD requirements necessary to implement the 2010 NO<sub>2</sub> NAAQS are SIP approved and implemented through the requirements of 7 **DE Admin. Code** 1125, Preconstruction Review.
- With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2010 NO<sub>2</sub> NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA.

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

**Delaware's Plan:** Delaware has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling data as part of Delaware's relevant SIP submissions, permit actions, and through federal grant commitments or in other ways that EPA may request.

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

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

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

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

### 3.0 Conclusion

Based on the discussion provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M) relative to the 2010 NO<sub>2</sub> NAAQS.

**16 DE Reg. 1098 (04/01/13)**