

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1102

FINAL

Secretary's Order No.: 2022-A-0010

RE: Approving Final Regulations to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

1102 Permits

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §§6003-6004, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits* ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend the aforementioned subsections of 7 DE Admin. Code 1102 to update the public notice requirements for general permits.

The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 *Del.C.* §§6003-6004.

In 2016, the United States Environmental Protection Agency ("EPA") issued a final rule (81 FR 71613), subsequently codified at 40 CFR 70.7(h)(2), that updated the list of contents to be identified in the public notices for Title V facilities. The proposed Amendments to 7 DE Admin. Code 1102 will ensure consistency with both the specific wording of EPA's updated final rule referenced above and the regulatory language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*.

Delaware law requires a DAQ Natural Minor permit for equipment that has the potential to discharge air contaminants into the atmosphere. Specifically, 7 DE Admin. Code 1102 establishes the permitting procedures and requirements for Delaware's Natural Minor permits, issued to all sources whose uncontrolled emissions exceed ten (10) pounds per day. Sources whose total uncontrolled emissions exceed Major Source emission levels require an additional permit called a Title V Operating permit.

The objective of the proposed Amendments is to update the public notice requirements for Natural Minor permits, in order to maintain consistency with the language of the EPA's updated final rule and Delaware's language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*. As noted above, the EPA recently updated the list of contents to be identified in public notices for Title V permits, *see* 81 FR 71613, 40 CFR 70.7(h)(2).

Section 12.0 of 7 DE Admin. Code 1102 was adopted by the Department to implement public notification requirements for Natural Minor Permits. The regulation requires the DAQ to provide for public participation and comment when reviewing and issuing permits. There is also a requirement to advertise permit application information in at least two (2) Delaware newspapers, in accordance with 7 *Del.C.* §§6003-6004. Members of the public also have an opportunity to request a hearing regarding the permit application if one has not already been scheduled by the Department.

The Department's proposed Amendments to subsections 12.3.2 and 12.4.2 will now require the following additional information to be included for all public notices for Natural Minor permits, in order to standardize Delaware's public notice requirements for both Title V Operating permits and Natural Minor permits:

- The name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information; and
- The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* ("*Register*"). Subsequent to publication of the proposed Amendments in the Register, but prior to the public hearing, the DAQ discovered minor clerical errors in the Department's proposed Exhibit 1. The errors were corrected by DAQ staff, and

the existing language in Exhibit 1 regarding applicability for a natural minor permit was clarified.

The corrected proposed Exhibit 1 was then posted on the DNREC hearing web page dedicated to this hearing matter. Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021, at which time the corrective action taken by staff regarding DNREC's proposed Exhibit 1 was explained for the benefit of the hearing record ("Record") being generated in this matter.

Only one member of the public (Emily Rodden from the New Castle Prevention Coalition) offered comments at the time of the hearing regarding the proposed Amendments to 7 DE Admin. Code 1102, and those comments were supportive in nature. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law. Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated March 10, 2022 ("Report"), which expressly incorporated into the Record the Department's proposed Amendments, attached to her Report as Appendix "A." The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed Amendments, as attached to the Report as Appendix "A."

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1102, *Permits*. As noted previously, the proposed Amendments will update the Department's DAQ regulations regarding public notice publication requirements for Natural Minor permits, in order to maintain consistency with the specific wording of EPA's final rule and Delaware's public notice publication requirements found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*."

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed Amendments, which will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, pursuant to 7 *Del.C.* §§6003-6004;
2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;
4. Promulgation of the proposed Amendments will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department's proposed Amendments, as published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;
7. The Hearing Officer's Report, including its established Record and the recommended proposed Amendments, as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
9. The Department shall submit this Order approving as final the proposed Amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

1102 Permits

06/11/2006

1.0 General Provisions

- 1.1 This regulation establishes the procedures that satisfy the requirement of 7 **Del.C.** Ch. 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to 7 **DE Admin. Code** 1125, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.
- 1.2 This regulation establishes procedures that enable a person to, as an option, secure terms and conditions in a permit that effectively limits potential to emit for the purpose of avoiding applicability of a federal standard, regulation or other federal requirement.
- 1.3 This regulation establishes procedures that enable a person subject to both this regulation and to 7 **DE Admin. Code** 1130 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a 7 **DE Admin. Code** 1130 operating permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.
- 1.4 Within 60 calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Departments opinion, is relevant to any permit application/ registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of 2.1 of this regulation.
- 1.5 Any approval granted by the Department pursuant to this regulation, and any exemption from the requirements of this regulation provided for in 2.2 of this regulation shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

06/11/2006

2.0 Applicability

- 2.1 Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.
 - 2.1.1 For equipment that meets all applicable emission rate (or rates) or standard (or standards) specified in 11.8.1 and 11.8.2 of this regulation without an air contaminant control device, and that meets the following conditions, the person shall submit to the Department a registration form pursuant to 9.0 of this regulation.
 - 2.1.1.1 For equipment without an air contaminant control device, the equipment has actual emissions to the atmosphere of any air contaminant or contaminants, in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than 10 pounds per day; and
 - 2.1.1.2 For equipment with an air contaminant control device, the equipment has actual emissions to the inlet of the air contaminant control device of any air contaminant or contaminants, in the aggregate, during any day that are equal to or greater than 0.2 pound per day and, during each and every day, that are less than 10 pounds per day; and
 - 2.1.1.3 7 **DE Admin. Code** 1125 does not apply.
 - 2.1.2 For equipment, a facility or an air contaminant control device that is not subject to 2.1.1 of this regulation and that is subject to a source category permit, the person shall submit to the Department an application for a source category permit pursuant to 10.0 of this regulation. A list of established source category permits is available from the Department.
 - 2.1.3 For equipment, a facility or an air contaminant control device that is not subject to 2.1.1 or 2.1.2 of this regulation, the person shall submit to the Department an application for a permit pursuant to 11.0 of this regulation.

- 2.1.4 Any person who operates equipment, a facility or an air contaminant control device in accordance with a valid permit issued pursuant to 2.1.3 of this regulation, and who later becomes subject to a source category permit:
 - 2.1.4.1 May, at any time, submit to the Department an application for a source category permit pursuant to 10.0 of this regulation; and
 - 2.1.4.2 Shall, within 60 calendar days of receipt of written request from the Department, submit to the Department an application for a source category permit pursuant to 10.0 of this regulation.
- 2.2 Provided that 7 **DE Admin. Code** 1125 does not apply, a permit for installation, alteration, or operation pursuant to this regulation shall not be required for the following equipment or air contaminant control device. Note however that other State and Federal requirements may apply.
 - 2.2.1 Equipment without an air contaminant control device that has actual emissions to the atmosphere of any air contaminant or contaminants, in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:
 - 2.2.1.1 The actual emissions are quantified and documented; and
 - 2.2.1.2 Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.
 - 2.2.2 Equipment with an air contaminant control device that has actual emissions to the inlet of the air contaminant control device of any air contaminant or contaminants, in the aggregate, during each and every day that are less than 0.2 pound per day, provided that:
 - 2.2.2.1 The actual emissions are quantified and documented; and
 - 2.2.2.2 Records are maintained at the facility and are made available to the Department upon request which document that the equipment qualifies for this exemption.
 - 2.2.3 The equipment listed in **Appendix A** of this regulation.
 - 2.2.4 For operation, any equipment or air contaminant control device that is specifically identified in an operation permit issued pursuant to 7 **DE Admin. Code** 1130.
 - 2.2.5 Equipment that is registered pursuant to 9.0 of this regulation.
- 2.3 Any person who operates fuel burning equipment which uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 100 million BTUs per hour, or any other equipment, that was exempted from the requirement to have a permit by 3.1 of this regulation (as in effect immediately preceding the then effective date of this regulation of June 1, 1997), or who operates a piece of equipment, a facility, or an air contaminant control device in accordance with a valid permit or letter of exemption that was issued by the Department prior to June 1, 1997, and who, with regard to that specific equipment, facility, or air contaminant control device, is now subject to 2.1 of this regulation:
 - 2.3.1 May, at any time, submit to the Department a registration form or a permit application pursuant to 2.1 of this regulation; and
 - 2.3.2 Shall, within 60 calendar days of receipt of a written request from the Department, submit to the Department a registration form or a permit application pursuant to 2.1 of this regulation; and
 - 2.3.3 Shall not initiate construction, installation, or alteration of the equipment, facility or air contaminant control device prior to complying with 2.1 of this regulation (i.e., prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form).
- 2.4 Any person may petition the Department to establish a source category permit. The petition and, if approved, the establishment of the source category permit shall be pursuant to the procedures in 7 **DE Admin. Code** 1130.

06/01/1997

3.0 Application/Registration Prepared by Interested Party

- 3.1 Any application/registration form submitted to the Department, or any request for the removal of any permit or registration, shall be made by the owner or lessee of the equipment, facility, or air contaminant control device or by his agent. If the applicant/registrant is a partnership or group other than a corporation, the application/registration shall be made by one individual who is a member of the group. If the applicant/registrant is a corporation, the application/registration shall be made by an appropriate representative of the corporation. The application/registration form shall be filed with the Air Quality Management Section of the Division of Air and Waste Management.
- 3.2 Each application form shall be signed by the applicant and certified by a professional engineer as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the application, plus plans and other papers submitted. Any applicant who fails to submit any relevant facts or who

submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this regulation.

- 3.3 Each registration form shall be signed and certified by the registrant as to the accuracy of the technical information concerning the equipment, apparatus or design features contained in the registration. Any registrant who fails to submit any relevant facts or who submitted incorrect information to the Department shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or correct information. The signature of the registrant shall constitute an agreement that the registrant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this regulation.

06/01/1997

4.0 Cancellation of Construction Permits

The Department may cancel a construction permit if the installation or alteration is not begun or if the work involved in installation or alteration is not completed within the time limits specified in the permit.

06/01/1997

5.0 Action on Applications

- 5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.
- 5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any person who has submitted a written request for such notice.

06/11/2006

6.0 Denial, Suspension or Revocation of Operating Permits

- 6.1 In the event the Department denies a request for approval of a permit to operate any equipment, facility, or device for which an application was made, the applicant shall not commence operation until such time that approval has been obtained from the Department or a permit to operate has been issued by the Department.
- 6.2 The Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such other actions as it deems necessary. Permit term or terms and condition or conditions which were not identified under 11.2.9 of this regulation and which were not subject to public participation under 12.3 of this regulation, or which do not otherwise conform to the requirements of this regulation, shall not limit potential to emit for the purpose of avoiding applicability of federal standards, regulations or other federal requirements.
- 6.3 Suspension or revocation of an operating permit shall become final immediately upon service of notice on the holder of the permit, unless otherwise stated in the notice of suspension or revocation.

06/01/1997

7.0 Transfer of Permit/Registration Prohibited

- 7.1 No person shall transfer a permit from one location to another, or from one piece of equipment to another. No person shall transfer a permit from one person to another person unless 30 days written notice is given to the Department, indicating the transfer is agreeable to both persons, and approval of such transfer is obtained in writing from the Department.
- 7.2 No person shall transfer a registration from one location to another, or from one piece of equipment to another. No person shall transfer a registration from one person to another person unless prior written notice is given to the Department, indicating the transfer is agreeable to both persons.

06/01/1997

8.0 Availability of Permit/Registration

Any permit and any registration form shall be available on the premises where the construction, alteration, installation, or operation activity takes place.

06/01/1997

9.0 Registration Submittal

- 9.1 Any person identified in 2.1.1 of this regulation shall register the piece of equipment with the Department on forms furnished by the Department.
- 9.2 A person shall register with the Department by submitting to the Department a completed registration form that is certified by the person identified in 3.1 of this regulation. Registration forms are available from the Department upon request. The registration shall consist of at least the following:
 - 9.2.1 A description of the equipment covered by the registration; and
 - 9.2.2 A description of the nature and quantification of the amount of the emission from the equipment; and
 - 9.2.3 A demonstration that the equipment meets the emission rate (or rates) or standard (or standards) specified in 11.8.1 and 11.8.2 of this regulation without an air contaminant control device.
- 9.3 Immediately after submitting to the Department the information specified in 9.2 of this regulation the registrant may initiate construction, install, alter or initiate operation of the equipment.
 - 9.3.1 The registrant shall maintain records at the facility which document that the equipment meets the requirements of 2.1.1 of this regulation, and shall make such records available to the Department upon request.
 - 9.3.2 If at any time the registered equipment does not meet the requirements of 2.1.1 of this regulation, operation of said equipment shall be immediately discontinued until all necessary permits have been secured.
 - 9.3.3 If at any time the Department determines that the registered equipment does not meet the requirements of 2.1.1 of this regulation, a violation of this regulation may have occurred and enforcement action may ensue.
- 9.4 The submittal of a registration form does not relieve the registrant from the requirement to comply with all State and Federal requirements. Such requirements include, but are not limited to, monitoring, record keeping and reporting requirements, any requirement to consider actual emissions or the potential to emit of all equipment when determining the applicability of or compliance with certain State and Federal requirements, and any requirement to revise a 7 **DE Admin. Code** 1130 permit if required to do so by that regulation.
- 9.5 A person may, in lieu of submitting to the Department a registration form, elect to:
 - 9.5.1 Apply for a permit pursuant to 2.1.2 or 2.1.3 of this regulation, as applicable.
 - 9.5.2 Submit to the Department all of the information required by 9.2.1 and 9.2.2 of this regulation. In such a case the registrant shall not commence construction/operation until written approval is obtained from the Department.

06/01/1997

10.0 Source Category Permit Application

- 10.1 Any person identified in 2.1.2 of this regulation shall submit to the Department an application requesting a source category permit on forms furnished by the Department.
- 10.2 The application requesting a source category permit shall include all of the following:
 - 10.2.1 All of the information called for by the source category application form. Source category application forms are available from the Department upon request.
 - 10.2.2 Certification by the person identified in 3.1 of this regulation that the source will comply with all of the terms and conditions of the source category permit.
 - 10.2.3 For facilities subject to 7 **DE Admin. Code** 1130, the person identified in 3.1 of this regulation shall be a responsible official as defined in 7 **DE Admin. Code** 1130, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."
- 10.3 For facilities not subject to 7 **DE Admin. Code** 1130, the Department shall grant approval by issuing to the applicant a source category permit.
- 10.4 For facilities subject to 7 **DE Admin. Code** 1130, the Department shall grant approval by incorporating the source category permit into the 7 **DE Admin. Code** 1130 permit by reference, and such incorporation shall be via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.
- 10.5 A source category permit may be valid for an indefinite period, except as provided for in 7 **DE Admin. Code** 1130 for sources subject to that regulation.

06/11/2006

11.0 Permit Application

- 11.1 Any person identified in 2.1.3 of this regulation shall submit to the Department an application for a permit on forms furnished by the Department. Permit application forms are available from the Department upon request.
- 11.2 The application shall consist of a description of at least the following:
 - 11.2.1 The equipment or apparatus covered by the application; and
 - 11.2.2 Any equipment connected or attached to, or servicing or served by the unit of equipment or apparatus covered by the application; and
 - 11.2.3 The plot plan, including the distance and height of building within a reasonable distance from the place where the equipment is or will be installed, if necessarily required by the Department; and
 - 11.2.4 The proposed means for the prevention or control of the emissions or contaminant;
 - 11.2.5 The chemical composition and amount of any trade waste to be produced as a result of the construction, installation, or alteration of any equipment or apparatus covered by this application;
 - 11.2.6 Any additional information, evidence or documentation required by the Department to show what the proposed equipment or apparatus will do.
 - 11.2.7 Methods and expected frequency of occurrence of the start-up and shutdown of the equipment, including projected effects of emissions to the atmosphere and on ambient air quality.
 - 11.2.8 The nature and amount of emission to be emitted by equipment, the facility, or an air contaminant control device or emitted by associated mobile sources.
 - 11.2.9 If the applicant desires any of the term (or terms) or condition (or conditions) of the permit to be an effective limit on the potential to emit for the purpose of avoiding applicability of a federal standard, regulation, or other federal requirement, the applicant shall state that fact in the application. The ensuing permit shall clearly indicate the specific term or terms and condition or conditions that are intended to limit potential to emit.
 - 11.2.10 If the applicant desires any of the term (or terms) or condition (or conditions) of a construction permit to transfer to a 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130 the following additional requirements apply:
 - 11.2.10.1 The person identified in 3.1 of this regulation shall be a responsible official as defined in 7 **DE Admin. Code** 1130, and the application shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."
 - 11.2.10.2 The application shall include the following additional information:
 - 11.2.10.2.1 The citation and description of all applicable requirements that will apply to the equipment, facility, or air contaminant control device and that will become applicable to any covered source as a result of the construction, installation, alteration, or operation; and a description of, or reference to, any applicable test method for determining compliance with each applicable requirement. The terms "applicable requirement" and "covered source" retain the meanings accorded to them in 7 **DE Admin. Code** 1130.
 - 11.2.10.2.2 Certification by the responsible official that the source will meet all applicable requirements on a timely basis, and, if a more detailed schedule is expressly required by any applicable requirement, that applicable requirement in accordance with that more detailed schedule.
 - 11.2.10.2.3 If desired, information necessary to define alternative operating scenarios under 6.1.10 of 7 **DE Admin. Code** 1130, or to define permit terms and conditions to implement emission averaging or operational flexibility under 6.1.11 and 6.8 of 7 **DE Admin. Code** 1130.
 - 11.2.10.2.4 If desired, a request that the Department, upon taking final action under 11.5.2 or 11.5.3 of this regulation, allow coverage under the permit shield as described in 6.6 of 7 **DE Admin. Code** 1130.
 - 11.2.10.3 The applicant shall provide additional information necessary to address any requirements that become applicable to the equipment, facility, or air contaminant control device after the date it filed an application under this section but prior to the date advertisement is made pursuant to 12.4.2 of this regulation. This requirement is in addition to the requirement of 2.1 of this regulation in situations where construction, installation, or alteration is necessary to comply with the new applicable requirement.
 - 11.2.10.4 The ensuing construction permit shall clearly indicate the specific term (or terms) or condition (or conditions) to transfer to the 7 **DE Admin. Code** 1130 permit, and each such term or condition shall specify the origin and the authority for that term or condition, and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

- 11.3 In situations in which construction, installation, or alteration is proposed, and operation of the equipment, facility, or air contaminant control device is to follow, such operation shall not commence until written approval is obtained by the applicant from the Department in accordance with 11.4 and 11.5 of this regulation, as applicable. The Department may condition approval to operate on a demonstration by the applicant of satisfactory performance of the equipment, facility, or air contaminant control device. In the event the applicant fails to demonstrate satisfactory performance, the Department may require the applicant to cease emissions from the source.
- 11.4 Persons not requesting review under 11.2.10 of this regulation shall, upon completion of the construction, installation or alteration, request that the Department grant approval to operate.
- 11.4.1 An application does not need to be submitted to the Department. Note however that an application may be required under 7 **DE Admin. Code** 1130 for persons subject to that regulation.
- 11.4.2 Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all of the terms and conditions of the construction permit, the Department shall grant approval to operate by issuing an operation permit.
- 11.5 Persons requesting review under 11.2.10 of this regulation shall, upon completion of the construction, installation or alteration, request that the Department transfer the terms and conditions of the construction permit into 7 **DE Admin. Code** 1130 operating permit.
- 11.5.1 The request shall contain the following information, and shall contain the following language from the responsible official: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."
- 11.5.1.1 A description of the compliance status, a compliance schedule, and a certification of compliance for the equipment, facility, or air contaminant control device with respect to all applicable requirements, in accordance with 5.4.8 and 5.4.9 of 7 **DE Admin. Code** 1130; and
- 11.5.1.2 A statement of the methods used to determine compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.
- 11.5.2 Upon satisfactory demonstration that the equipment, facility or air contaminant control device complies with all applicable requirements and all of the terms and conditions of the construction permit, and not prior to the expiration of the EPA review period provided for in 12.5 of this regulation, the Department shall transfer the specified terms and conditions to the 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130.
- 11.5.3 If the Department determines that the equipment, facility, or air contaminant control device does not comply with any applicable requirement the Department may take enforcement action, and shall do one of the following:
- 11.5.3.1 Provide an opportunity for the applicant to resolve the noncompliance; then, upon resolution, transfer the specified terms and conditions of the construction permit to the 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130; or
- 11.5.3.2 Transfer the specified terms and conditions of the construction permit, and an enforceable compliance schedule which satisfies the requirements of 5.4.8.3 of 7 **DE Admin. Code** 1130, to the 7 **DE Admin. Code** 1130 permit by reopening the permit for cause pursuant to the procedures in 7 **DE Admin. Code** 1130; or
- 11.5.3.3 Deny the request for approval to operate.
- 11.6 No permit shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment, facility, or air contaminant control device is designed to operate or is operating without causing a violation of the State Implementation Plan, or any rule or regulation of the Department, and without interfering with the attainment or maintenance of National and State ambient air quality standards, and without endangering the health, safety, and welfare of the people of the State of Delaware. The Department may, from time to time, issue or accept criteria for the guidance of applicants indicating the technical specifications which it deems will comply with the performance standards referenced herein.
- 11.7 Before a permit is issued, the Department may require the applicant to conduct such tests as are necessary in the opinion of the Department to determine the kind or amount of the contaminants emitted from the equipment or whether the equipment or fuel or the operation of the equipment will be in violation of any of the provisions of any rule or regulation of the Department. Such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department.
- 11.8 The following emission rates or standards for each air contaminant emitted from any equipment, facility or air contaminant control device shall be specified in each permit issued pursuant to this regulation:

- 11.8.1 The rate or standard established or relied upon in the State Implementation Plan (SIP) to include the State of Delaware 7 **DE Admin. Code** 1100 "Regulations Governing the Control of Air Pollution" and regulations promulgated pursuant to Section 111 and Section 112 of the Clean Air Act (CAA); and
 - 11.8.2 The rate that was shown under 11.6 of this regulation as not interfering with the attainment and maintenance of any National and State ambient air quality standard, and not endangering the health, safety, and welfare of the people of the State of Delaware; or
 - 11.8.3 The rate requested by the applicant. In no case shall this rate be greater than the potential to emit of the equipment, facility, or air contaminant control device; and in no case shall this rate be less stringent than the rate specified in 11.8.1 and 11.2 of this regulation.
- 11.9 Each emission rate and standard shall be enforceable as a practical matter. Enforceable as a practical matter means that each emission rate and standard:
- 11.9.1 Is stated in the permit as a technically specific and accurate limitation.
 - 11.9.2 Is specifically associated with a particular piece or pieces of equipment or air contaminant control device or devices.
 - 11.9.3 Has associated conditions which, in total, establish a method to determine compliance. Such associated conditions shall include appropriate testing, monitoring, record keeping, and reporting requirements.
 - 11.9.4 Has a recurring, predictable time period under which compliance with the limitation will be demonstrated. Such time period shall be that specified in the underlying State regulation or federal rule or, in the absence of such specification and upon approval by the Department, shall be hourly, daily, monthly, or some other time period which provides for the demonstration of compliance with the limitation no less frequently than monthly.
- 11.10 A construction permit or any renewal thereof shall be valid for a period not to exceed three years from the date of issuance, unless sooner revoked by order of the Department, and may be renewed upon application to and approval by the Department.
- 11.11 An operating permit may be valid for an indefinite period, unless the equipment or operation for which a permit is written has controlled emissions of 100 tons or more per year of any air contaminant, in which case the permit shall be valid for not more than a five-year period and shall be evaluated prior to re-issuance to determine if permitted emission limits are appropriate.
- 11.12 The provisions of 2.1 and 11.3 of this regulation shall not apply to the operation of equipment or processes for the purpose of initially demonstrating satisfactory performance to the Department following construction, installation, modification or alteration of the equipment or processes. The applicant shall notify the Department sufficiently in advance of the demonstration and shall obtain the Department's prior concurrence of the operating factors, time period and other pertinent details relating to the demonstration.
- 11.13 Upon receipt of an application for the issuance of an operating permit the Department, in its discretion, may issue a temporary operating permit valid for a period not to exceed 90 days. A temporary operating permit issued pursuant to 11.0 of this regulation shall not be extended more than once for an additional 90-day period.

06/11/2006 [~~xx/xx/xxxx~~ 08/11/22]

12.0 Public Participation

- 12.1 Information obtained through the provisions of this regulation shall be made available for public inspection at any Department office except where such information is of confidential nature as defined in 7 **Del.C.** §6014. The Department shall provide for public participation and comment in accordance with 12.2 through 12.6 of this regulation, as applicable.
- 12.2 Upon receipt of a source category permit application or a permit application, in proper form, the Department shall provide for public participation and comment by:
- 12.2.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment).
 - 12.2.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:
 - 12.2.2.1 ~~the~~ The fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is ~~located,~~ located;
 - 12.2.2.2 ~~a~~ A brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission ~~involved,~~ involved; and
 - 12.2.2.3 ~~the~~ The name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and a statement of procedures to request a hearing.

- 12.2.3 Sending notice of the information detailed in 12.2.2 of this regulation by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address.
- 12.2.4 Holding, if the Department receives a meritorious request for a hearing within 15 calendar days of the date of the advertisement described in 12.2.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action.
 - 12.2.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.
 - 12.2.4.2 Not less than 20 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:
 - 12.2.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and
 - 12.2.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.
- 12.2.5 Considering all comments submitted by the applicant and the public in reaching its final determination.
- 12.3 For each permit application requesting to make the terms and conditions in a permit to effectively limit potential to emit to avoid applicability of a federal standard, regulation, or other federal requirement, the Department shall provide for public participation and comment by:
 - 12.3.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.
 - 12.3.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, and (4) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).
 - 12.3.3 On or before the date of the advertisement described in 12.3.2 of this regulation:
 - 12.3.3.1 Sending notice of the information detailed in 12.3.2 of this regulation by mail to the Administrator of the EPA, through the Region III office, and to any person who has requested such notification from the Department by providing to the Department their name and mailing address.
 - 12.3.3.2 Providing the Administrator of the EPA, through the Region III office, a copy of the draft permit.
 - 12.3.4 Holding, if the Department receives a meritorious request for a hearing within 30 calendar days of the date of the advertisement described in 12.3.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.
 - 12.3.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.
 - 12.3.4.2 Not less than 30 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:
 - 12.3.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and
 - 12.3.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.
 - 12.3.5 Affording the applicant an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.
 - 12.3.6 Considering all comments submitted by the applicant, the public, and the Administrator of the EPA in reaching its final determination.
 - 12.3.7 Providing to the Administrator of the EPA, through the Region III office, a copy of the permit.

- 12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a 7 **DE Admin. Code** 1130 permit via the administrative permit amendment process specified in 7 **DE Admin. Code** 1130, the Department shall provide for public participation and comment by:
- 12.4.1 Making available in at least one location in the State of Delaware a public file containing a copy of all materials that the applicant has submitted (other than those granted confidential treatment), a copy of the draft permit, and a copy or summary of other materials, if any, considered in making the preliminary determination.
- 12.4.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, and (4) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).
- 12.4.3 On or before the date of the advertisement described in 12.4.2 of this regulation:
- 12.4.3.1 Sending notice of the information detailed in 12.4.2 of this regulation by mail to any person who has requested such notification from the Department by providing to the Department their name and mailing address, and to the representative of any affected states designated by those states to receive such notices. The term "affected states" retains the meaning accorded to it in 7 **DE Admin. Code** 1130.
- 12.4.3.2 Providing the Administrator of the EPA, through the Region III office, affected states, any person who requests it, and the applicant a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).
- 12.4.3.3 Providing the Administrator of the EPA, through the Region III office, a copy of the permit application unless the Administrator waives the requirement.
- 12.4.4 Holding, if the Department receives a meritorious request for a hearing within 30 calendar days of the date of the advertisement described in 12.4.2 of this regulation, or if the Department deems it to be in the best interest of the State to do so, a public hearing on an application or the draft permit for interested persons to appear and submit written or oral comments on the air quality impact of the proposed action or on the specific terms and conditions of the draft permit.
- 12.4.4.1 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.
- 12.4.4.2 Not less than 30 calendar days before the time of said hearing, notification that a public hearing will be held and the time and place of that hearing shall be:
- 12.4.4.2.1 Served upon the applicant as summonses are served or by registered or certified mail; and
- 12.4.4.2.2 Published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State.
- 12.4.5 Affording the applicant an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.
- 12.4.6 Considering all comments submitted by the applicant, the public, and any affected state in reaching its final determination. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.
- 12.4.7 After meeting the requirements of 12.4.1 through 12.4.6 of this regulation, providing the Administrator of the EPA, through the Region III office, a copy of the proposed permit [i.e., the version of the permit that represents the Departments final determination under 12.4.6 of this regulation], all necessary supporting information, and providing a notice to the Administrator and to any affected state of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. The term "applicable requirement" retains the meaning accorded to it in 7 **DE Admin. Code** 1130.
- 12.4.8 On or before the date that the Department provides the proposed permit to EPA for review under 12.4.7 of this regulation), issuing a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

- 12.5 The Department shall not issue the permit if the Administrator objects to its issuance in writing within 45 days of receipt of all of the information provided to the Administrator pursuant to 12.4.7 of this regulation. Any EPA objection under this paragraph shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that must be revised to respond to the objection. The Administrator will provide the applicant a copy of the objection. The Department may thereafter issue only a revised permit that satisfies EPA's objection.
- 12.6 If the Administrator does not object in writing under 12.5 of this regulation, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in 12.4 of this regulation, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not amend the **7 DE Admin. Code 1130** permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of the construction permit or the amended **7 DE Admin. Code 1130** permit or its requirements if the construction permit or the amended **7 DE Admin. Code 1130** permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued an amended the **7 DE Admin. Code 1130** permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or (5)(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application under **7 DE Admin. Code 1130**.

06/01/1997

13.0 Department Records

- 13.1 The Department will keep for five years such records and submit to the Administrator of the EPA such information as the Administrator may reasonably require to ascertain whether the optional procedures to establish and transfer the terms and conditions of a construction permit issued pursuant to this regulation into a **7 DE Admin. Code 1130** operating permit via the administrative permit amendment process specified in **7 DE Admin. Code 1130** comply with the requirements of the Federal Clean Air Act and 40 CFR Part 70.

1 DE Reg. 48 (07/01/97)

9 DE Reg. 1084 (01/01/06)

9 DE Reg. 1981 (06/01/06)

12 DE Reg. 347 (09/01/08)

01/11/2019

Appendix A

(For the applicability of Appendix A, see 2.2 of this regulation)

- 1.0 Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.
- 2.0 Except as provided for in **7 DE Admin. Code 1122**, "Restriction on Quality of Fuel in Fuel Burning Equipment," external combustion fuel burning equipment which:
- 2.1 Uses any fuel and has a rated heat input of less than 10 million British-Thermal Units (BTUs) per hour.
- 2.2 Uses only natural gas, LP gas, or other desulfurized fuel gas and has a rated heat input of less than 15 million British-Thermal Units (BTUs) per hour.
- 3.0 Air conditioning or comfort ventilating systems.
- 4.0 Vacuum cleaning systems used exclusively for office applications or residential housekeeping.
- 5.0 Ventilating or exhaust systems for print storage room cabinets.
- 6.0 Exhaust systems for controlling steam and heat.
- 7.0 Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality

and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 450 pounds in any calendar month.

- 8.0 Internal combustion engines in vehicles used for transport of passengers or freight.
- 9.0 Maintenance, repair, or replacement in kind of equipment for which a permit to operate has been issued.
- 10.0 Equipment which emits only nitrogen, oxygen, carbon dioxide, or water vapor.
- 11.0 Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.
- 12.0 Equipment used to liquefy or separate oxygen, nitrogen or the rare gases from the air.
- 13.0 Fireworks display.
- 14.0 Smudge pots for orchards or small outdoor heating devices to prevent freezing of plants.
- 15.0 Outdoor painting and sand blasting equipment except for the removal of lead-containing coatings from outdoor water tanks by dry abrasive blasting.
- 16.0 Lawnmowers, tractors, farm equipment and construction equipment.
- 17.0 Gasoline dispensing facilities that never exceed a monthly throughput of 10,000 gallons.
- 18.0 Stationary gasoline storage tanks that:
 - 18.1 Have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or
 - 18.2 Have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or
 - 18.3 Have a capacity less than 250 gallons and that were constructed after December 31, 1978.
- 19.0 Fire schools or fire fighting training.
- 20.0 Residential wood burning stoves and wood burning fireplaces.
- 21.0 Any stationary storage tank not subject to control by the provisions of this regulation, which contains any liquid having a true vapor pressure less than 0.5 psia at 70°F or is less than 5000 gallons capacity.
- 22.0 Buildings, cabinets, and facilities used for storage of chemicals in closed containers.
- 23.0 Sewage treatment facilities.
- 24.0 Water treatment units.
- 25.0 Quiescent wastewater treatment operations.
- 26.0 Non-contact water cooling towers (water that has not been in direct contact with process fluids).
- 27.0 Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.
- 28.0 Equipment used for hydraulic or hydrostatic testing.

29.0 Blueprint copiers and photographic processes.

30.0 Kilns used for firing ceramic ware that are heated exclusively by natural gas, electricity, or liquid petroleum gas, and the BTU input is less than 15 million BTUs per hour.

31.0 Inorganic acid storage tanks equipped with an emission control device.

32.0 Any internal combustion engine associated with a stationary electrical generator that: 1) has a standby power rating of 450 kilowatts or less that is used only during times of emergency; 2) is located at any residence; or 3) is located at any commercial poultry producing premise, as these terms are defined in 7 **DE Admin. Code** 1144.

33.0 Any internal combustion fuel burning equipment, which is not associated with a stationary electrical generator, and has an engine power rating of 450 hp or less.

22 DE Reg. 613 (01/01/19)

26 DE Reg. 118 (08/01/22) (Final)