

**Secretary's Order No.: 2013-A-0028**

**RE: Approving Final Amendments to 7 DE Admin. Code 1138,  
Emission Standards for Hazardous Air Pollutants for Source Categories,  
Section 6.0: "Chromium Electroplating and Anodizing Tanks".**

**Date of Issuance: August 13, 2013**

**Effective Date of the Amendment: September 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 regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6.0, "Chromium Electroplating and Anodizing Tanks". Section 6.0 addresses the emissions of chromium compounds from chromium electroplating and chromium anodizing tanks. The purpose of this proposed regulatory amendment action is to reduce the public's exposure to hexavalent chromium, a known carcinogen, in a manner consistent with the EPA's residual risk revisions.

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (“HAPs”) in the 1990 Amendments to the Clean Air Act. Congress stipulated that the EPA implement a 2-phase rulemaking process to reduce these health risks. In the first phase, under Section 112(d), the EPA was to adopt emission standards based on currently available control technologies; these standards were referred to as maximum achievable control technology (MACT) standards. In the second phase, under Section 112(f), the EPA was to assess the health risks remaining following the full implementation of the MACT standard. If the EPA found that the MACT standard achieved a reduction in emissions such that the public was protected with an ample margin of safety, no further action was required. If the assessment indicated that the public was not protected with an ample margin of safety, the EPA was to then adopt more stringent requirements; these second phase standards were referred to as “residual risk standards”.

The EPA adopted the MACT standard applicable chromium electroplating and anodizing operations in 1995 as Subpart N in 40 CFR Part 63. Delaware adopted the federal Subpart N requirements as Section 6.0 in Regulation 1138 in 1999. In 2010 and 2011, the EPA undertook an extensive residual risk assessment and concluded that the public health was not protected with an ample margin of safety. The EPA amended the MACT standard requirements and finalized the residual risk standard on September 19, 2012. The notable, more stringent changes in the residual risk standard included the reduction in the maximum allowable emission of chromium to the atmosphere, the prohibition for the continued use of certain fume suppressants, and the addition of new housekeeping procedures.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-22. The Department published the initial proposed regulatory amendments in the June 1, 2013 *Delaware Register of Regulations* and held a public hearing on June 27, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 5, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. While the Department received public comment from the regulated community at its workshops held in both New Castle and Sussex counties earlier this year (which was then incorporated into the proposed regulation), as noted in the Report, no members of the public attended the aforementioned hearing on June 27, 2013, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on July 12, 2013.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of the revised regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6.0, "Chromium Electroplating and Anodizing Tanks", Delaware will be able to provide increased protection for Delaware

citizens against potential adverse health effects linked to emissions of chromium compounds from chromium electroplating and chromium anodizing tanks, specifically, from exposure to hexavalent chromium, a known carcinogen, in a manner consistent with the EPA's residual risk revisions.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at a public hearing;

3.) The Department held a public hearing on the proposed *revised* Amendments on June 27, 2013;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended *revised* Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the June 1, 2013, *Delaware Register of Regulations*;

6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to provide increased protection for Delaware citizens against potential adverse health effects linked to emissions of chromium compounds from chromium electroplating and chromium anodizing tanks, specifically, from exposure to hexavalent chromium, a known

carcinogen, in a manner consistent with the EPA's residual risk revisions. Moreover, the *revised* Amendments are well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation 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 and the Department determines is appropriate.

/s/ Collin P. O'Mara

Collin P. O'Mara  
Secretary