

Secretary's Order No.: **2008-A-0011**

RE: Approval as Final Plan the Proposed Revisions to the State Implementation Plan (SIP) for the Attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS)

Date of Issuance: April 1, 2008

Effective Date of the Amendment: April 1, 2008

I. Background

On Tuesday, March 4, 2008, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive public comment on proposed revisions to the State Implementation Plan (SIP) for the Attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (hereinafter referred to as "NAAQS"). The United States Environmental Protection Agency ("EPA") delegated authority to the Department to administer certain responsibilities in Delaware under the federal Clean Air Act, as amended, *42 U.S.C. §§ 7401 et seq.* ("CAA"). The delegation included preparing Delaware's State Implementation Plan ("SIP"), which is required by EPA's regulations known as the National Ambient Air Quality Standard ("NAAQS").

In April of 2005, the Environmental Protection Agency (EPA) designated 126 areas of the country as “non-attainment” under the PM_{2.5} NAAQS. Among those non-attainment areas is the Philadelphia-Wilmington, PA-NJ-DE Non-Attainment Area (NAA). This NAA includes New Castle County in Delaware, and federal law requires the NAA to attain the NAAQS by April, 2010. In response to the non-attainment designation, Delaware has developed the SIP revision for Delaware’s proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS.

The purpose of this SIP is to: (1) demonstrate that with all existing and proposed controls, all of Delaware’s PM_{2.5} monitors will show attainment in 2009; (2) demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE nonattainment area will attain the PM_{2.5} NAAQS in 2009; (3) establish Delaware’s 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity; and (4) treat emission reduction credits banked under Regulation No. 34, Emissions Banking and Trading Program, as “emitted.”

Written comments regarding this proposed SIP revision were received by the Department during the pre-hearing phase of this matter, as well as numerous written and verbal comments received at the time of the hearing itself. All public comments were thoroughly addressed in the Department’s Response Document, which was attached to the Hearing Officer’s Report and expressly incorporated therein. As a result of some

of the written comments received from EPA, the Department made several non-substantive changes to the SIP revisions. Ron Amirikian and Jack Sipple of the Department's Division of Air and Waste Management, Air Quality Management Section, developed the record at the hearing. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated March 31, 2008, and that report is expressly incorporated herein by reference.

II. Findings and Conclusions:

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed revision to the State Implementation Plan (SIP) with respect to State Implementation Plan (SIP) for the Attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). Based upon the public record, I agree that the proposed SIP revision should be approved as the Department's final plan and submitted to the EPA to comply with the CAA and EPA's CAA regulations.

Order

It is hereby ordered that AQM's suggested revisions with respect to the State Implementation Plan ("SIP") for the Attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) be made,

and that the proposed revisions be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

This revision to the SIP will demonstrate that, with all existing and proposed controls, all of Delaware's PM_{2.5} monitors will show attainment in 2009, and will demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE nonattainment area will attain the PM_{2.5} NAAQS in 2009. Moreover, this SIP will establish Delaware's 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity, and will treat emission reduction credits banked under Regulation No. 34, Emissions Banking and Trading Program, as "emitted".

For all the reasons above, this SIP revision with respect to the attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) demonstrates Delaware's overall strategy for attaining the NAAQS by the year 2009, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s John A. Hughes
John A. Hughes
Secretary

HEARING OFFICER'S REPORT

Regarding: Proposed Revisions to the
State Implementation Plan (SIP) for the Attainment of the
Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS), and
for Delaware's 2002 Base Year PM_{2.5} SIP Emission Inventory

Lisa A. Vest
Hearing Officer

March 31, 2008

I. Background:

On Tuesday, March 4, 2008, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive public comment on proposed revisions to the State Implementation Plan (SIP) for the Attainment of the Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (hereinafter referred to as “NAAQS”). In April of 2005, the Environmental Protection Agency (EPA) designated 126 areas of the country as “non-attainment” under the PM_{2.5} NAAQS. Among those non-attainment areas is the Philadelphia-Wilmington, PA-NJ-DE Non-Attainment Area (NAA). This NAA includes New Castle County in Delaware, and federal law requires the NAA to attain the NAAQS by April, 2010. In response to the non-attainment designation, Delaware has developed the SIP revision for Delaware’s proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS.

The purpose of this SIP is to: (1) demonstrate that with all existing and proposed controls, all of Delaware’s PM_{2.5} monitors will show attainment in 2009; (2) demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE nonattainment area will attain the PM_{2.5} NAAQS in 2009; (3) establish Delaware’s 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity; and (4) treat emission reduction credits banked under Regulation No. 34, Emissions Banking and Trading Program, as “emitted.”

With regard to Delaware's 2002 Base Year PM_{2.5} SIP Emission Inventory, this SIP revision will provide a complete and accurate calendar year 2002 Base Year Emissions Inventory for all Delaware counties of PM_{2.5} emissions and emissions of precursor pollutants that contribute to the formation of PM_{2.5}, including sulfur dioxide, oxides of nitrogen, volatile organic compounds, and ammonia. It will also serve as the primary source of data used in the projection of future year emissions.

Written comments regarding this proposed SIP revision were received by the Department during the pre-hearing phase of this matter, as well as numerous written and verbal comments received at the time of the hearing itself, all of which will be addressed below in this report. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

A. Exhibits:

Exhibit No. 1: Copy of the Delaware State Implementation Plan for attainment of the PM_{2.5} National Ambient Air Quality Standard – Attainment Demonstration;

Exhibit No. 2: Copy of the Delaware State Implementation Plan for attainment of the PM_{2.5} National Ambient Air Quality Standard – 2002 Base Year SIP Emissions Inventory for PM_{2.5} and precursors;

Exhibit No. 3: EPA Comments on Delaware State Implementation Plan for attainment of the PM_{2.5} National Ambient Air Quality Standard – Attainment Demonstration;

Exhibit No. 4: Delaware Register Publication for Delaware's PM_{2.5} Attainment Demonstration SIP, and Delaware's 2002 base year PM_{2.5} SIP Inventory dated February 1, 2008;

Exhibit No. 5: Copy of the News Journal Affidavit of the notice of this public hearing published on January 27, 2008;

Exhibit No. 6: Copy of the Delaware State News Affidavit of the notice of this public hearing published on January 27, 2008;

Exhibit No. 7: Copy of the State of Delaware Public Meeting Calendar notice of this public hearing for Delaware's PM_{2.5} Attainment Demonstration SIP, and Delaware's 2002 base year PM_{2.5} SIP inventory posted the week of January 28, 2008;

Exhibit No. 8: Copy of the News Journal Affidavit of location change for this public hearing, published on February 17, 2008; and

Exhibit No. 9: Copy of the Delaware State News Affidavit of location change for this public hearing, published on February 17, 2008.

B. Findings of Fact:

It should be noted that, prior to the Department personnel submitting the aforementioned nine exhibits to this Hearing Officer for inclusion into the hearing record in this matter, the Department read a statement summarizing the history behind Delaware's SIP process in an attempt to help those in attendance understand better the subject matter and scope of the hearing that evening. Following the reading of that statement, the opportunity was given by the Department to go off the record, to give those in attendance an opportunity to ask Department personnel present at the hearing any questions they might have regarding air quality matters and public concerns regarding the same which were *outside* the scope of this hearing. Those in attendance did not wish the hearing to go off the record, and so the Department proceeded to submit the nine exhibits into the formal hearing record as noted above.

For brevity's sake, and for the Secretary's understanding in this matter, a transcript of that statement (which provides *extensive* factual background information as to the history of the development of Delaware's SIP matters, as well as a specific breakdown of exactly what the scope of this public hearing concerned) is attached hereto as Attachment "A", and is expressly incorporated herein to this Hearing Officer's report.

C. Comments/Questions:

As noted above, there were numerous members of the public who attended this hearing, many of which who wanted to make comments to be included in the formal hearing record. Also present at this hearing were numerous members of the Department, specifically, from the Department's Air Quality Management Section, all of whom offered detailed factual responses to the public's questions and concerns. It is true that the scope of this hearing was very limited to the two SIP matters at hand, to wit: (1) the SIP revision for Delaware's proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS; and (2) revisions to Delaware's 2002 Base Year PM_{2.5} SIP Emission Inventory. Nevertheless, due to the level of passion in the room with regard to public concern over Delaware's air quality matters, this Hearing Officer allowed those in attendance to ask questions and offer comments on the hearing record, even though most of the verbal comments offered were *outside* the narrow scope of this hearing.

Subsequent to the conclusion of this hearing, Department staff took great pains to scrutinize each and every question and/or comment raised at the hearing, and provided this Hearing Officer with a very detailed and thorough Response Document concerning the same. AQM's Response Document encompasses the full range of all comments contained in the record, including those from the

public and from EPA. Each comment was meticulously organized according to its source (e.g., public comment, letter, etc.), followed by a thorough and rational discussion of the issue based on the record. In addition, AQM offered its recommendation as to how each of these issues should be resolved. In most instances, no changes were warranted, in AQM's view, but in a few other situations involving EPA comments received by the Department, minor amendments were desirable to reflect existing realities or to clarify wording. None of these changes were deemed substantial, or sufficient to require another hearing.

After reviewing AQM's Response Document, it is my view that the Department has done an excellent job of identifying all of the relevant issues and discussing them in a thorough and balanced manner which accurately reflects the information in the record. Therefore, the Secretary may get an in-depth understanding of this record by reading AQM's Response Document, which is attached hereto as Attachment "B" and expressly incorporated into this report. Lastly, attached hereto as Attachment "C" is the final SIP revision document, reflecting the minor amendments made by the Department as a result of EPA's comments on the same, which is also being expressly incorporated into this report at this time.

III. Conclusions and Recommended Findings:

On the basis of the record developed in this matter, I find and conclude that the record supports approval, in final form, of the Department's proposed SIP revisions which were the subject of the public hearing held on March 4, 2008. I further find that AQM has provided a sound basis for the proposed revisions to the State Implementation Plan (SIP) with respect to the two SIP matters at hand, to wit: (1) the SIP revision for Delaware's proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS; and (2) revisions to Delaware's 2002 Base Year PM_{2.5} SIP Emission Inventory.

As noted earlier, the Response Document not only captures the relevant aspects of the record generated in this matter, but also provides a thorough discussion of the issues at hand, along with a recommended resolution of each. This Hearing Officer found the dimensions of AQM's Response Document to be very rational and even-handed, and the proposed resolutions to be reasonable and consistent with the record. Instead of repeating all of that information herein, I recommend that the Department's proposed revisions to the State Implementation Plan be made, and that the proposed amendments be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

I further recommend the following additional findings:

1. Proper notice of the hearing was provided, as required by law.

2. In April of 2005, the Environmental Protection Agency (EPA) has designated 126 areas of the country as “non-attainment” under the PM_{2.5} NAAQS. Among those non-attainment areas is the Philadelphia-Wilmington, PA-NJ-DE Non-Attainment Area (NAA). This NAA includes New Castle County in Delaware, and federal law requires the NAA to attain the NAAQS by April, 2010

3. In response to the non-attainment designation, Delaware has developed the SIP revision for Delaware’s proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS.

4. Adoption of the proposed revisions to the SIP revision for Delaware’s proposed plan for Attainment of the Fine Particle (PM_{2.5}) NAAQS will (1) demonstrate that with all existing and proposed controls, all of Delaware’s PM_{2.5} monitors will show attainment in 2009; (2) demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE nonattainment area will attain the PM_{2.5} NAAQS in 2009; (3) establish Delaware’s 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity; and (4) treat emission reduction credits banked under Regulation No. 34, Emissions Banking and Trading Program, as “emitted.”

5. With regard to Delaware's 2002 Base Year PM_{2.5} SIP Emission Inventory, this SIP revision will provide a complete and accurate calendar year 2002 Base Year Emissions Inventory for all Delaware counties of PM_{2.5} emissions and emissions of precursor pollutants that contribute to the formation of PM_{2.5}, including sulfur dioxide, oxides of nitrogen, volatile organic compounds, and ammonia. It will also serve as the primary source of data used in the projection of future year emissions.

6. The Response Document as provided by AQM provides a thorough, accurate and balanced summary of the record, and has been incorporated herein expressly for that purpose.

7. AQM's recommended conclusions with respect to each issue are well-reasoned and based on the record. As such, they are sufficient to serve as specific findings for that purpose.

8. The proposed SIP revisions, as amended to reflect comments in the record, should be issued in final form and adopted as the Department's final action, and be published as a Notice in the *Delaware Register of Regulations* in the next available issue.

/s/ Lisa A. Vest
Lisa A. Vest
Hearing Officer