

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to Delaware Shellfish Sanitation Regulations

DATE: June 12, 2006

I. Background:

A public hearing was held on Wednesday, May 31, 2006, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Shellfish Sanitation Regulations. The proposed changes relate to shellfish processing plant sanitation, requirements for shellfish harvesters and classification of Delaware waters regarding the suitability of the shellfish therein for human consumption and related legal harvest access. These proposed amendments would further bring Delaware's existing regulations into conformity with current U.S. Food and Drug Administration and National Shellfish Sanitation Program requirements.

Delaware is a member of the Interstate Shellfish Sanitation Conference (ISSC). Periodically, the ISSC will amend National Shellfish Sanitation Program (NSSP) guidelines and Model Ordinance specifications related to shellfish harvesting area classifications, processing plant sanitation, enforcement, and the legal and administrative aspects of the Program. The U.S. Food and Drug

Administration (FDA) evaluates state programs for consistency with the guidelines and Model Ordinance. In response to NSSP changes and FDA evaluations, Delaware's regulations concerning Shellfish Sanitation must be amended.

In preparation for the hearing, a public workshop was held by the Shellfish and Recreational Water Branch of the Department on March 31, 2006, at which time the public was able to ask questions and/or provide comments to the Department regarding this proposed promulgation. It should be noted that the Department successfully answered all questions from the public prior to the date of this hearing. It should be further noted that there were no members of the public present at the actual hearing on May 31, 2006. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on May 31, 2006, Jack Pingree, Manager of the Shellfish and Recreational Water Branch of DNREC, offered the Department's exhibits pertaining to this proposed amendment, and provided a brief explanation as to the reasons for the need to amend the existing Delaware regulations regarding shellfish sanitation, as noted above. Again, no members of the public were present at the time of this hearing. In order to provide a complete and thorough report concerning this promulgation (and for the Secretary's review), a summary of the Department's presentation, which (1) compares and contrasts the

existing regulation language with the proposed language; and (2) offers sound reasoning for said proposed changes, is attached hereto as Exhibit “A”.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed amendments, and has thoroughly addressed all public questions and/or comments provided during the workshop phase of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. Proper notice was provided as required by law.
2. Promulgation of these proposed amendments will correct minor clerical and/or grammatical errors in the present regulatory language, and further bring Delaware’s existing regulations into conformity with current U.S. Food and Drug Administration and National Shellfish Sanitation Program requirements.
3. This rulemaking will further the policies and purposes of 7 Del.C. Ch. 60 by continuing to ensure safety of the public health and environment, while taking into account industry concerns.

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

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