

HEARING OFFICER'S REPORT

Regarding: Proposed Revision to the State Implementation Plan for the
Attainment and Maintenance of the National Ambient Air Quality
Standards by Amending Regulation No. 1102
(Formally Regulation No. 2), "Permits"

Lisa A. Vest
Public Hearing Officer

May 11, 2006

I. Background:

On Wednesday, April 26, 2006, a public hearing was held at 1:00 p.m. in the DNREC Auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive comment on proposed revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending Regulation No. 1102 (formally Regulation No. 2), "Permits", of the State of Delaware "Regulations Governing the Control of Air Pollution". The proposed amendments are (1) minor revisions to ensure that the regulatory language is clear that all permits issued under this regulation are federally enforceable, regardless of whether they are intended to limit Potential to Emit; and 2) renumbering the regulation to be consistent with the style manual of the Code of Delaware Regulations.

It should be noted that no members of the public attended this hearing on April 26, 2006, nor were any written comments received by the Department prior to the close of the public record regarding these proposed regulatory promulgations. Proper notice of the hearing was provided as required by law.

II. Review of Record:

At the time of the hearing, Gene Pettingill of the Department's Air Quality Management Section read into the record all of the Department's Exhibits to be submitted concerning this promulgation. Again, no

hearing comments were ever received by the Department from the public concerning this matter, and thus there were no documents submitted for inclusion to the public record under Section 109, which was reserved for “Hearing Comments and DNREC Responses”.

A recent EPA review of the Department’s regulations revealed that the existing regulatory language is not clear that all permits issued pursuant to Delaware Regulation No. 1102 are federally enforceable. The EPA further believes that the current regulatory language implies that only permits intended to limit “Potential to Emit” of a source are federally enforceable. The AQM Section of the Department’s Division of Air and Waste Management agrees with EPA, and so to ensure enforceability of such permits, Regulation No. 1102 needs to be revised.

In addition to the revisions to this particular regulation’s language as noted above, the numbering of Regulation No. 1102 requires updating at this time as well, in order for the same to be consistent with the style manual of the Code of Delaware Regulations.

III. Conclusions and Recommended Findings:

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed amendments to existing Regulation No. 1102. Therefore, I recommend the following findings with regard to this regulatory matter:

