

Secretary's Order No.: **2008-A-0034**

RE: Approval as Final Plan the Proposed Revision to the State Implementation Plan (SIP): Administrative and Non-Substantive Changes to Delaware's Regulations Governing the Control of Air Pollution

Date of Issuance: August 11, 2008

Effective Date of the Amendment: September 11, 2008

I. Background

On Thursday, July 31, 2008, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive public comment on a proposed revision to the State Implementation Plan (SIP) regarding administrative and non-substantive changes to Delaware's Regulations Governing the Control of Air Pollution. The purpose of this SIP revision is to make the necessary administrative changes in all existing Delaware SIP regulations so that the language uses and the styles are all consistent with Delaware's Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006 edition). Some additional non-substantive changes and corrections of existing clerical errors have been proposed to these SIP regulations by the Department at this time as well.

It should be pointed out that the aforementioned administrative changes are completely non-substantive, and that these changes, along with the correction of clerical errors as noted above, do not alter the regulatory features of any existing individual SIP regulations (i.e., effective

dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.).

No public comment regarding these proposed revisions to the SIP regulations were received by the Department, either during the pre-hearing phase of this matter or at the public hearing itself on July 31, 2008, nor were any members of the public present at said 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 August 7, 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 the Air Quality Management Section of the Department has provided a sound basis for the aforementioned proposed revisions to Delaware's State Implementation Plan (SIP) and the SIP regulations. Based upon the public record, I agree that the proposed revisions, which are administrative and non-substantive in nature, should be approved as the Department's final plan at this time, as reflected in the Hearing Officer's Report of August 7, 2008, which is attached and expressly incorporated into this Order.

Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding.
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations.
3. The Department held a public hearing in a manner required by the law and regulations.
4. Delaware's SIP Regulations Governing the Control of Air Pollution, as a result of having been developed by the Department over a long period of time (approximately 40 years), have adopted different coding and numbering methods and styles. These variances have resulted in confusion and misunderstandings when updating the same.
5. Adoption of the proposed administrative and non-substantive revisions to all of Delaware's existing SIP Regulations will result in uniform language use and style consistent with the Delaware Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006 edition).
6. The adoption of the proposed SIP revisions, which are strictly administrative and non-substantive in nature, will not alter any regulatory features of any existing individual SIP regulations,

such as effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.

7. Moreover, the adoption of the proposed SIP revisions to correct the clerical errors present in Delaware's current SIP regulations will provide better clarity and a fuller understanding of the regulatory language contained within all existing SIP regulations to the general public and the regulated community.
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed revisions to Delaware's current SIP regulations, as published in the July 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, are adequately supported, not arbitrary or capricious, and consistent with the applicable laws and regulations. Consequently, it should be approved as final, and shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
10. The Department shall submit the revised regulations as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order

It is hereby ordered that the Department's aforementioned proposed revisions to Delaware's State Implementation Plan and its SIP regulations 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

The revisions to Delaware's SIP regulations with respect to the administrative and non-substantive changes needed at this time will not alter the regulatory features of any existing individual SIP regulation, and will bring Delaware's current SIP regulations into accordance with the Delaware Administrative Code, "Manual for Drafting Regulations (March 2006). Furthermore, this promulgation will provide better clarity and a fuller understanding of the regulatory language contained within all existing SIP regulations to the general public and the regulated community, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

 /s/ John A. Hughes
John A. Hughes
Secretary

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HEARING OFFICER'S REPORT

Regarding: Proposed Revision to the
State Implementation Plan (SIP): Administrative and Non-Substantive
Changes to Delaware's Regulations Governing the Control of Air Pollution

Lisa A. Vest
Hearing Officer

August 7, 2008

I. Background:

On Thursday, July 31, 2008, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive public comment on a proposed revision to the State Implementation Plan (SIP) regarding administrative and non-substantive changes to Delaware's

Regulations Governing the Control of Air Pollution. The purpose of this SIP revision is to make the necessary administrative changes in all existing Delaware SIP regulations so that the language uses and the styles are all consistent with Delaware's Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006). Some additional non-substantive changes and corrections of existing clerical errors have been proposed to these SIP regulations by the Department at this time as well.

It should be pointed out that the aforementioned administrative changes are completely non-substantive, and that these changes, along with the correction of clerical errors as noted above, do not alter the regulatory features of any existing individual SIP regulations (i.e., effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.).

The proposed SIP revisions, along with copies of all Delaware existing SIP regulations with the proposed changes, were published in the Delaware Register of Regulations for public review and comment on July 1, 2008. The documents have been available for public review and comment in DNREC's Air Quality section offices in both Dover and New Castle since June 16, 2008. On July 2, 2008, the proposed SIP revisions and the related SIP regulations were sent to the U.S. Environmental Protection Agency (i.e., "EPA") Region III office for pre-hearing review and comments. On July 30, 2008, the Department received a letter from the

U.S. EPA Region III Office, stating that the EPA had determined (and agreed) that the proposed changes as described in the hearing documents were purely administrative in nature, and would not change the substance or intent of any affected rules if adopted.

No public comment regarding these proposed SIP revisions were received by the Department, either during the pre-hearing phase of this matter or at the public hearing itself on July 31, 2008, nor were any members of the public present at said hearing. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

A. Exhibits:

Exhibit No. 1: Copy of the Register notice for the proposed SIP revisions, and the proposed Delaware SIP revision, both published in the July 1, 2008 edition of the Delaware Register of Regulations;

Exhibit No. 2: Copy of the State of Delaware's Regulations Governing the Control of Air Pollution, with changes as set forth in the proposed SIP revision;

Exhibit No. 3: Copy of the affidavits of publication from the News Journal, the Sunday News Journal, and the Delaware State News regarding the notice of this public hearing, which were published on June 22, 2008;

Exhibit No. 4: Copy of the legal notice mailed to the Department's mailing list to notify the addressees of this public hearing and its subject matter; and

Exhibit No. 5: Copy of the letter received by the Department from the U.S. EPA Region III Office dated July 30, 2008, regarding the proposed SIP revision and the related State of Delaware Regulations Governing the Control of Air Pollution.

B. Findings of Fact:

Frank Gao, Environmental Engineer in the Planning Branch of the Air Quality Management Section of the Department's Division of Air and Waste Management, was the project leader for this proposed SIP revision subject matter, and served as the principal author of the same as well. After entering the Department's aforementioned exhibits into the formal public hearing record of this matter, Mr. Gao provided a brief background with regard to this proposed SIP revision project.

Over the past three decades, the State of Delaware has developed 48 regulations governing air quality management in Delaware. Among those 48 regulations, 32 have been approved by the U.S. EPA as individual SIP revisions, and are listed accordingly

in 40 CFR 52. Those regulations, having been developed by the Department over a long period of time, have adopted different coding and numbering methods and styles. These variances have resulted in confusion and misunderstandings when updating the same.

The purpose of this SIP is to update all of Delaware's existing individual SIP regulations to one uniform style, in accordance with the Delaware Administrative Code, "Manual for Drafting Regulations (March 2006)". In addition to this style update, several clerical errors are being corrected in the existing SIP regulations as well. Again, the aforementioned administrative changes are completely non-substantive, and these changes, along with the correction of errors as noted above, do not alter the regulatory features of any existing individual regulations (i.e., effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.).

For brevity's sake, and for the Secretary's understanding in this matter, copies of the Department's Exhibit #1 (the Register Notice for this proposed SIP revision, and the proposed Delaware SIP revision itself) is attached hereto as Attachment "A", and is expressly incorporated herein to this Hearing Officer's report.

III. Conclusions and Recommended Findings:

On the basis of the record developed in this matter, it appears that the Air Quality Management Section of the Department has provided a sound basis for the proposed revision to Delaware's State Implementation Plan (SIP), specifically, with respect to the aforementioned administrative and non-substantive changes to the SIP regulations. Therefore, I recommend that the Department's proposed revisions to the State Implementation Plan and the SIP regulations 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. The Department has jurisdiction under its statutory authority to make a determination in this proceeding.
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations.
4. The Department held a public hearing in a manner required by the law and regulations.
5. Delaware's SIP Regulations Governing the Control of Air Pollution, as a result of having been developed by the Department over a long period of time (approximately 40 years), have adopted different

coding and numbering methods and styles. These variances have resulted in confusion and misunderstanding when updating the same.

6. Adoption of the proposed administrative and non-substantive revisions to all of Delaware's existing SIP regulations will result in uniform language use and style consistent with the Delaware Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006 edition).

7. The adoption of the proposed revisions to the SIP regulations, which are strictly administrative and non-substantive in nature, will not alter any regulatory features of any existing individual SIP regulations, such as effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.

8. Moreover, the adoption of the SIP revisions to correct the clerical errors present in Delaware's current SIP regulations will provide better clarity and a fuller understanding of the regulatory language contained within all existing individual SIP regulations to the general public and the regulated community.

9. The proposed SIP revisions 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

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