



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Office of the
Secretary

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Secretary's Order No. 2008-A-0014

Re: Approval of Final Regulation in Delaware's Regulations Governing Control of Air Pollution, 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 5, Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Date of Issuance: April 14, 2008

Effective Date: July 28, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 *Del. C.* §§8001 et seq., 29 *Del. C.* §§10111 *et seq.* and 7 *Del. C.* §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On March 8, 2007, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2007-03 to amend the current Regulation 38 in the *Delaware's Regulations Governing Control of Air Pollution*. ("DRGCAP"). The Department's experts within the Division of Air and Waste Management ("DAWM"), Air Quality Management Section, drafted the amendments to reflect changes in the federal regulation of perchloroethylene ("PCE"), which is also known as tetrachlororoethylene. In 1990, the federal Clean Air Act ("CAA") in Section 112 classified the air emissions from PCE as a hazardous air pollutant ("HAP"). In 1993, United States Environmental Protection Agency ("EPA") issued regulations to reduce the

emissions of PCE from dry cleaning facilities based upon maximum achievable control technology (“MACT”). The Department promulgated Regulation 38 in *DRGCAP* and reflected the federal regulation under its authority as the Delaware administrator of the CAA and to allow independent state authority to enforce the standards under Title 7 of the Delaware Code. On July 27, 2006, EPA amended its regulation of PCE in *40 CFR Part 63* to impose more stringent standards after completing the required PCE risk assessments, which concluded that the MACT standard did not adequately reduce the public’s health risk to an acceptable level, as defined in the CAA. Consequently, the Department’s proposed amendments will reflect the federal changes and impose the more stringent emission standards on Delaware’s approximately 80 permitted dry cleaning facilities that are authorized to release PCE under the limits established by the air pollution control permit issued under *DRGCAP Regulation 1102*. The proposed regulation also will provide a permanent exemption for all existing permitted dry cleaners as small area sources from obtaining a Title V permit requirement under *DRGCAP Regulation 30*. In addition, the Department proposed weekly testing for PCE leaks and repair requirements in order to better protect the environment and public health.

The health risks of PCE are still being studied by the EPA and others, but the record contains ample evidence that human health is adversely affected by air exposure to PCE, primarily through neurological disorders and it also poses a possible or probable risk to human health as a carcinogenic.

The Department held three public workshops on October 29, November 5, and November 6, 2007 in New Castle and Kent Counties, and published the proposed regulation on January 1, 2008 in the *Delaware Register of Regulations*, and held a public

hearing on January 22, 2008 before the Department's hearing officer, Robert P. Haynes, who issued a report dated March 12, 2008, which is attached hereto as Appendix A. The Report recommends approval of the proposed regulation as a final regulation. I agree and adopt the Report and its reasoning.

The proposed regulation is supported by the considerable scientific evidence developed by the Department's experts, and in a collaborative manner with interested participants, which included many of the small business owners. The Department conducted outreach to the dry cleaning industry and has reviewed the concerns of small businesses for the regulatory burden imposed by this proposed regulation, which is based upon a federal regulation. The proposed regulation reflects the dry cleaning industry's acceptance of the regulation because no public comments were submitted.

I find that the record developed during the public hearing process provides ample support for the Department to adopt this final regulation. The justification is that it will result in cleaner air quality and improve the health of workers in the dry cleaning business, who often are the owners and who are the most at risk for the exposure to air emissions from PCE. The federal regulation reflects developments in reasonably available air pollution controls, and the Delaware's regulation will also reflect the standards enabled by the improvements in air pollution technology in the dry cleaning business. The regulation approved by this Order will result in lowering the release of HAPs and improve the working conditions of many Delawareans.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and *29 Del C. §10118(d)*, hereby approved the final regulation in Appendix A to the Report and reflects

a nonsubstantive change due to the delayed effective date from the proposed regulation published in the January 1, 2008 *Delaware Register of Regulations*;

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation; and

3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

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