



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No.: 2012-A-0017

RE: Approving Final Amendment to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM) and the associated Plan for Implementation (PFI)

Date of Issuance: May 15, 2012

Effective Date of the Amendment: June 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI). 7 DE Admin. Code 1131 is an air regulation that includes the inspection and maintenance program requirements which apply to vehicles registered in both Kent and New Castle County. The associated PFI includes information such as technical documentation of the test standards and procedures as required by Regulation 1131, as well as a demonstration that the requirements of Regulation 1131

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and Delaware's overall vehicle inspection and maintenance program meet the minimum federal requirements of 40 CFR 51 Subpart S, Inspection and Maintenance Program Requirements. Both Regulation 1131 and the PFI are required by the federal Clean Air Act (CAA) to be a part of Delaware's State Implementation Plan (SIP).

The purpose of this proposed promulgation is to update 7 DE Admin. Code 1131 and the PFI by (1) removing the non-regulatory provisions of Regulation 1131 and adding these provisions to the PFI; (2) reformatting and reordering the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements. It should be noted that the proposed amendments will not likely affect the public. No changes will be proposed to the emissions tests or the standards, exemptions, etc. which currently apply to Delaware registered vehicle owners. Revisions to the PFI will generally align the plan with current Delaware Division of Motor Vehicles (DMV) and DNREC's Division of Air Quality (DAQ) practices. The simplification and clarification of the regulatory text of Regulation 1131 will positively impact all.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-01. The Department published the proposed regulatory amendments in the March 1, 2012 *Delaware Register of Regulation* and held a public hearing on April 2, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. It should be noted that the Department received no public comment from the regulated community at the public hearing, as noted in the Report.

I find that the Department's experts in the DAQ fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendments to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI), Delaware will be enabled to align the PFI with current Delaware Division of Motor Vehicles (DMV) and DNREC's Division of Air Quality (DAQ) practices. As noted previously, no changes are being made at this time to the emissions tests or standards which currently apply to Delaware registered vehicle owners, and the simplification and clarification of the regulatory text of Regulation 1131 will positively impact all.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;

3.) The Department held a public hearing on April 2, 2012 on the proposed Amendments in order to consider public comments before making any final decision concerning this matter;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments do not reflect any substantive change from the proposed regulation Amendment as published in the March 1, 2012, *Delaware Register of Regulations*;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the non-regulatory provisions of Regulation 1131 and add these provisions to the PFI; (2) reformat and reorder the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements; and

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Collin P. O'Mara
Secretary

MEMORANDUM

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Lisa A. Vest 
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Amendment to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI)

DATE: May 9, 2012

I. Background:

A public hearing was held on Monday, April 2, 2012, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware, to receive comment on the Department's proposal to amend 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI). 7 DE Admin. Code 1131 is an air regulation that includes the inspection and maintenance program requirements which apply to vehicles registered in both Kent and New Castle County. The associated PFI includes information such as technical documentation of the test standards and procedures as required by Regulation 1131, as well as a demonstration that the requirements of Regulation 1131 and Delaware's overall vehicle inspection and maintenance program meet the minimum federal requirements of 40 CFR 51 Subpart S, Inspection and Maintenance Program Requirements. Both Regulation 1131 and the PFI are required by the federal Clean Air Act (CAA) to be a part of Delaware's State Implementation Plan (SIP).

The purpose of this proposed promulgation is to update 7 DE Admin. Code 1131 and the PFI by (1) removing the non-regulatory provisions of Regulation 1131 and adding these provisions to the PFI; (2) reformatting and reordering the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements. It should be noted that the proposed amendments will not likely affect the public. No changes will be proposed to the emissions tests or the standards, exemptions, etc. which currently applies to Delaware registered vehicle owners. Revisions to the PFI will generally align the plan with current Delaware Division of Motor Vehicles (DMV) and DNREC's Division of Air Quality (DAQ) practices. The simplification and clarification of the regulatory text of Regulation 1131 will positively impact all.

The PFI program in Delaware is one of the many important Ozone Control Measures in place. These control measures are integral to Delaware being able to achieve the National Ambient Air Quality Standard for Ozone. Delaware's PFI is covered by Regulation 131 in New Castle and Kent Counties, and Regulation 1126 in Sussex. The differences between the two regulations are primarily centered on the types of emissions testing vehicles receive, and when the County was deemed not in compliance with the aforementioned Ozone standard. Since 1980, the State's implementation programs have reduced over 24,000 tons of ozone contributing pollutants from vehicles. Delaware has achieved these reductions by vehicle inspections, and by requiring that those vehicles which fail the emissions test be repaired as a condition to

receiving their DMV vehicle registration. It should be noted that this proposed promulgation is focused on Regulation 1131, and not Regulation 1126.

In Delaware, new vehicles are exempt from receiving the DMV emissions test for the first five years. Older vehicles are tested based upon the age of the vehicle and type of fuel. The proposed amendments to the PFI program address the repair side of Regulation 1131, and the requirements established in Section 8.0 of the Department's proposal.

The Department has had the draft amendments to Regulation 1131 and the associated PFI published on the Division of Air Quality regulatory web page and made available since November 2010, thereby permitting the public to follow the development of this proposed promulgation. The Department sent the aforementioned draft to the affected sources in the regulated community on March 4, 2011, and also advised them at that time of DNREC's intent to hold public workshops to discuss this proposed promulgation in each of the three counties of Delaware (these workshops were all held in March of 2011). On March 1, 2012, the Department published the proposed revisions in the Delaware Register of Regulations, and (as noted above) the public hearing regarding this proposed promulgation was held on April 2, 2012.

It should be noted that only one gentleman attended the hearing on April 2, 2012, however, he had no comment regarding the Department's proposals at that time. Although the record was held open through April 20, 2012 (in anticipation of the EPA forwarding comment in this matter), the Department received no comment with regard to this proposed promulgation. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on April 2, 2012, Valerie Gray of the Department's Division of Air Quality, offered the Department's thirty-three (33) exhibits pertaining to these proposed amendments to Regulation 1131, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits was a copy of the Start Action Notice for this promulgation (SAN No. 2012-01), copies of the legal notices regarding the holding of the aforementioned public workshops and public hearing, copies of related EPA reference rules upon which the Department relied in the drafting of this proposed amendment, and copies of the actual proposed *revised* amendment to 7 DE Admin. Code 1131 and the associated PFI.

Ms. Gray then offered a brief summary with regard to the work that the Department has been doing over the past eighteen months concerning the proposed revisions to Regulation 1131 and the associated PFI. The General Assembly wrote changes Title 7 and Title 21 of the Delaware Code, which were adopted by the Governor in 2010. These two changes offer additional flexibility to the vehicle owner of a car or truck that has failed the DMV emission inspection tests by providing an exception to Title 21 vehicle registration requirements for vehicles being driven on Delaware highways by Delaware Emission Education Program (DEEP) certified emission repair technicians during drive cycle testing. In order for certified emission repair technicians to drive unregistered cars or trucks in the course of drive cycle testing those vehicles, they must be in possession of a Department-issued permit, which DNREC has begun calling the "SB215" permit. The proposed amendments to Regulation 1131 address the

provisions associated with Certified Emission Repair Technicians and the SB215 permits for drive cycle testing unregistered vehicles that have failed their emission tests at DMV.

It should be noted that DEEP was developed to train and educate emission repair technicians in Delaware. Certified emission repair technicians provide the consumer a measure of confidence that their vehicle's emission control equipment will be repaired by knowledgeable auto mechanics. DEEP addresses the training and testing of emission repair technicians, and not the certification process. For simplicity purposes, these emission repair technicians are occasionally referred to as DEEP certified technicians. The proposed amendments, which are the subject of this promulgation, refer to these technicians as Certified Emission Repair Technicians (CERT), and not DEEP technicians.

The current Regulation 1131 provides two pathways for an automotive repair technician to become a certified emission repair technician: (1) submission of their ASE credentials for the L1 Certification, plus two years' work experience; or (2) passing the DEEP certification exam, plus two years' work experience. The Department issues the DEEP certified technician credentials after reviewing their application. Such credentials included a certificate signed by the DNREC Secretary, an individually numbered stamp for stamping the repair receipts, and an individually numbered sign recognizing them as certified to repair emission control equipment in Delaware.

In order to determine the process of training and certifying Delaware's emission repair technicians, the Department established a Workgroup comprised of representatives from Delaware Technical and Community College (DTCC), DMV, and Delaware

Automotive Service Professionals (DASP)¹. This Workgroup met on November 9, 2010, to begin to discuss these issues. In consultation with the Workgroup, the Department is now proposing to continue to rely upon the National Institute of Automotive Service Excellence (ASE)² testing program for certifying automotive repair technicians until funding is found to re-establish and sustain the DEEP program training conducted by DTCC.

The ASE L1 test is designed to demonstrate the technicians' knowledge of the skills required to diagnose the complex emission control related problems found in today's vehicles. ASE certifications expire every 5 years, thereby requiring the technician to re-certify in order to maintain their credentials. Other alternatives the Workgroup considered were to include other training and certification programs that are deemed equivalent. Examples of such alternatives may include training and certification a repair technician brings from a neighboring state, or the training and certification received by a vehicle manufacturer, such as General Motors, Ford or Toyota.

In order to improve the efficiency of the process, the Workgroup discussed linking the DEEP application with the SB215 permit (i.e., apply for DEEP certification and receive the permit as well. The permit would be linked to the 5-year ASE L1 certification.

¹ DASP is an organization representing many of Delaware's automotive repair technicians.

² ASE is an independent, non-profit organization created in 1972 to improve the quality of vehicle repair and service by testing and certifying repair and service professionals. By selecting ASE certification, DNREC provides vehicle owners with the ability to find certified technicians who have proven to be knowledgeable professionals in the emissions repair field.

Examples of this process are as follows:

- If a technician currently holds a current DEEP certification, he will be issued a DEEP certification *and permit* for 5 years. At the end of those 5 years, he will be required to obtain his ASE L1 credentials in order to maintain his DEEP certification and permit.
- If a technician is currently DEEP certified but holds an ASE L1 certification that expires in 3 years, he will be issued a DEEP certification *and permit* that expires in 3 years (at the end of the ASE L1 term).
- If a technician just received his ASE L1 certification, his DEEP certification *and permit* will be for the same 5 year period his ASE L1 credentials were issued.

At this time, the Department is proposing to continue to rely on the aforementioned ASE testing program as the primary way for certifying automotive repair technicians until funding is found to re-establish and sustain the DEEP program training conducted by DTCC. As previously noted, however, the Department will continue to consider other training and testing programs for emission repair technicians that are deemed equivalent.

The Workgroup also discussed and agreed to the Department's proposal that, in order to receive the DEEP certification as a certified emissions repair technician, each technician will be required to obtain ASE-L1 certification, as well as have the current two year work experience requirement. Automotive repair technicians currently certified by the DEEP program will be grandfathered for a period not to exceed 5 years or less if they

also hold a current ASE-L1 certification. Technicians with current ASE-L1 certification shall be issued a permit for the term of the current ASE-L1 certification. The estimated cost of the ASE-L1 certification testing is approximately sixty dollars.³

The SB215 permit to operate unregistered vehicles while conducting drive cycle testing will be issued to all Delaware DEEP certified emission repair technicians at the time of application. Section 8.0 of the proposed amendments to Regulation 1131 present the regulatory language for this process to occur. These amendments apply to *all* technicians who wish to become certified emission repair technicians, regardless of what county they work.

In order for the Department to administer the permit program, the General Assembly recognized the need to recover costs. 7 Del.C. §6709 provides the ability of the Department to do so. As a result, the Department is proposing a \$25.00 per year permit fee, which will be assessed at the time of application. The assessment will be for the entire 5-year period of the permit, or \$125.00. Permits that are issued any period less than 5 years shall be pro-rated at the rate of \$25.00 per year for each year the permit is to cover.

In the course of working on Section 8.0 of Regulation 1131, the Department determined that the regulation could be better organized. As a result, DAQ has chosen to move sections of the current regulation to a companion document required by the EPA. The companion document is known as the "Plan for Implementation", or, PFI. The PFI describes how the Department will implement and administer the federal requirements for Low-Enhanced Inspection and Maintenance (LEIM) programs.

³ This cost is based upon ASE fees posted on their website as of 11/02/11 – see <http://ase.com/Tests/ASE-Certification-Tests/cbt/Dates,-Fees,---Test-Times.aspx>

3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of the aforementioned proposed amendment to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI), will update the current regulation by (1) removing the non-regulatory provisions of 1131 and adding these provisions to the PFI; (2) reformatting and reordering the requirements of 1131 and the PFI to simplify and clarify their content; and (3) revising the PFI to ensure it fully comports with federal requirements;
6. The aforementioned proposed amendment to 7 DE Admin. Code 1131 and the associated PFI will not likely affect the public, as no changes will be proposed to the emission tests or standards, exemptions, etc., which currently apply to Delaware registered vehicle owners. Rather, revisions to the PFI will align the plan with current DMV and DAQ practices, and the simplification and clarification of the regulatory language to Regulation 1131 will positively impact all;
7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, copies of the above-referenced proposed amendments are attached hereto as Appendix "A", and the same are expressly incorporated into this Hearing Officer's Report.

It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the required public notice obligations regarding this proposed amendment. It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

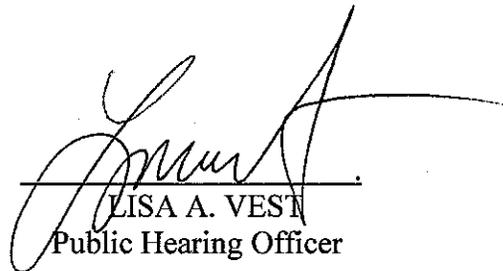
III. Conclusions and Recommendations:

Based on the record developed in this matter, I conclude that the Department has provided appropriate reasoning regarding the need for this proposed amendment to 7 DE Admin. Code 1131, Low Enhanced Inspection & Maintenance Program (LEIM), and the associated Plan for Implementation (PFI). Accordingly, I recommend promulgation of this proposed amendment in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority, 7 Del.C., Chapter 60, to make a determination in this proceeding;
2. The Department provided adequate public notice of both the public workshops and the public hearing in a manner required by the law and regulations;

8. The Department's proposed amendments to this regulation, as published in the March 1, 2012 *Delaware Register of Regulations* and set forth within Appendix "A" hereto, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as a final regulation amendment, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;
9. The Department shall submit the proposed regulation amendments as final 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.



LISA A. VEST
Public Hearing Officer

