



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2013-A-0021

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1108,
*Sulfur Dioxide Emissions from Fuel Burning Equipment***

Date of Issuance: June 12, 2013

Effective Date of the Amendment: July 11, 2013

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 proposed *revised* regulations to amend 7 DE Admin. Code 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment. The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-06. The Department published its initial proposed regulation Amendments in the April 1, 2013 *Delaware Register of Regulations*, and held a public hearing on April 24, 2013. It should be noted that public comment was received from both the Delaware Chapter of the Sierra Club and the U.S. Department of Defense by the Department with regard to this proposed promulgation, and the Department provided a very thorough and detailed response to the same.

Delaware's Good Nature depends on you!

The proposed *revised* amendments to 7 DE Admin. Code 1108 will reduce the allowable content of sulfur in fuel oils combusted in Delaware, and to effectively reduce the emission of sulfur dioxide (SO₂) into the atmosphere. These proposed changes will aide in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program. It should be noted that other North-East and Mid-Atlantic states are adopting similar regulations as well.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 7, 2013 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. The new limits shall apply to all three counties in Delaware.

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 Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on April 24, 2013;

3.) The Department held a public hearing on April 24, 2013 in order to consider public comment before making any final decision;

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

5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) reduce the allowable content of sulfur in fuel oils combusted in Delaware; (2) effectively reduce the emission of sulfur dioxide (SO₂) into the atmosphere; (3) the aforementioned reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program; and, lastly, because (4) the amendments are well supported by documents in the record;

6.) Specifically, the aforementioned proposed *revised* amendments to 7 DE Admin. Code 1108 will enable Delaware to do the following: (1) revise the current sulfur content limit in residual fuel from 1% to 0.5%; (2) revise the current sulfur content limit in distillate fuel from the current 0.3% to 15 ppm; (3) for any other fuel, the current sulfur limit of 1% shall be retained; (4) all aforementioned sulfur content limits shall apply to

all three counties of Delaware; (5) the compliance date for said sulfur content limits shall be July 1, 2016; (6) revise Section 4.2 to allow using ASTM method D2622, and any alternative method found in 40 CFR 80.580, to provide flexibility; (7) create a detailed certification and recordkeeping section; and (8) provide clarifying language to the existing language contained in 7 DE Admin. Code 1108, as so to provide clarity and a better understanding to the general public and the regulated community with regard to this regulation;

7.) The Department shall submit this Order approving the final *revised* 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 Amendments to 7 DE Admin. Code 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment

DATE: June 7, 2013

I. Background:

A public hearing was held on Wednesday, April 24, 2013, at 6:00 p.m. at the Kent County Administrative complex, 555 South Bay Road, Room 220, Dover, Delaware to receive comment on proposed amendments to 7 DE Admin. Code 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment. The Department ("DNREC"), through its Division of Air Quality ("DAQ"), proposes to revise DE 7 Admin. Code 1108 to reduce the allowable content of sulfur in fuel oils combusted in Delaware, and to effectively reduce the emission of sulfur dioxide (SO₂) into the atmosphere. These proposed changes will aide in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program. It should be noted that other North-East and Mid-Atlantic states are adopting similar regulations as well.

As a brief overview of this proposed promulgation, DAQ proposes to lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. Additionally, DAQ proposes that the new limits apply to all three counties in Delaware.

The likely affected public, should the Department promulgate these proposed amendments, would be Delaware's residential, commercial, and industrial users of distillate fuel oils (#1 and #2 fuel oil) and residual fuel oils (#4, #5, and #6 fuel oil). Additionally, refineries, storage facilities, and distributors of distillate and residual fuel oils will likely be affected by the proposed changes to 7 DE Admin. Code 1108.

As noted above, the Department held a public hearing to receive comment on this proposed promulgation on Wednesday, April 24, 2013. Comment was received by the Department concerning this matter at the time of the public hearing, and the same will be addressed below. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on April 24, 2013, Frank Gao, an Environmental Engineer in the Planning Branch of the Department's Division of Air Quality ("DAQ") offered the Department's seven (7) exhibits pertaining to these proposed amendments, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits were copies of the Start Action Notices for this promulgation, copies of the legal notices regarding the holding of this

public hearing on April 24, 2013, and copies of the actual proposed amendments to the aforementioned affected sections of 7 DE Admin. Code 1108.

Mr. Gao then offered a brief summary regarding this proposed promulgation. The current version of this regulation was promulgated in 1985, and set up sulfur content limits in fuels used for fuel burning equipment in Delaware for the past 28 years. The burning of fuels with sulfur content will, in turn, produce sulfur dioxide (SO₂) emissions into the atmosphere. The pollutant SO₂ is one of seven pollutants that are covered by the National Ambient Air Quality Standards (NAAQS). It also contributes to the formation of fine particulate matter, acid rain, and regional haze problems in the northeast region.

In the spring of 2012, the Department decided to revise Regulation 1108 to lower the sulfur content limits in fuels in order to effectively reduce emissions of sulfur dioxide (SO₂) into the atmosphere. Such emission reductions will aid in the attainment and maintenance of Delaware's air quality standards relative to SO₂ and fine particulate matter (PM_{2.5}). As noted above, the reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program. It should be noted that other North-East and Mid-Atlantic states are adopting similar regulations as well.

In July of 2012, the Department planned a public workshop to discuss with the public and the affected industry the proposed revision and the relevant issues, and to collect comments and recommendations. The workshop was held on August 13, 2012, at which time seven representatives from the public and the affected industry participated. The Department received verbal questions and comment from the audience during this workshop. Afterwards, several stakeholders presented written comment to the Department concerning this matter.

After careful review of both verbal and written comments received at its workshop, the Department revised the first draft of this proposed promulgation. On February 14, 2013, the Department sent its response letter and draft revisions to all workshop participants. In its response letter, the Department's DAQ explained all major issues contained in the comments, and described the revisions made to the proposed promulgation based on said comments. On February 21, 2013, the Department received additional written comments from one stakeholder, recommending some additional changes to the proposed draft revisions. As a result, the Department created a third draft revision of these proposed amendments, after incorporating the February 21, 2013 comments.

The third draft revision, as described above, has been available for public review and comment in the Department's DAQ offices in both Dover and New Castle, as well as on the Department's website, since March 18, 2013. Additionally, the same was published in the Delaware Register of Regulations on April 1, 2013. Legal notices regarding the availability and publication of this proposed revision to 7 DE Admin. Code 1108 was announced in both The Sunday News Journal and the Delaware State News on March 17, 2013, and the same was distributed among relevant stakeholders and interested parties via the Department's mailing list.

The proposed revisions to 7 DE Admin. Code 1108 can be summarized as follows:

1. For sulfur content limit in residual fuel, the Department has revised the current limit of 1% to 0.5%. For sulfur content limit in distillate fuel, the Department

revised the current 0.3% to 15 ppm. For any other fuel, the current sulfur content limit of 1% will be retained;

2. The Department proposes that the sulfur content limits apply to all three counties of Delaware;
3. For the compliance date, the Department revised a July 1, 2015 date to July 1, 2016, based upon the workshop and post-workshop comments;
4. Also based on the post-workshop comments, the Department revised Section 4.2, which would allow using ASTM (American Society for Testing and Materials) method D2622, and any alternative method in 40 CFR 80.580 to provide flexibility; and
5. The Department created a detailed certification and recordkeeping section.

Following the Department's presentation at the public hearing, written comment was submitted by the Delaware Chapter of the Sierra Club ("Sierra Club"). The Sierra Club commented on Section 1.2 of the proposed revision, stating that "Section 1.2provides for exemptions to the regulations, which adds fluid catalytic cracking to the list of exempted processes, which also include fluid coking and catalyst regeneration." The Sierra Club also asks "...that all exemptions in Section 1.2 be removed from the final regulations, including fluid catalytic cracking, fluid coking and catalyst regeneration."

In addition to the comments and requests set forth by the Sierra Club, the Department also received written comment from the U.S. Department of Defense ("DoD") during the comment period of the public hearing held on April 24, 2013. The DoD suggests in its written comments that the Department's proposed revision add an explicit exception provision for fuels used by on-road and non-road military equipment.

The DoD explains that fuels for non-road and on-road military equipment are covered by the National Security Exemption.

The Department's DAQ carefully and thoroughly reviewed the written comments received by both of the above entities, and formally responded to the same in its Technical Response Memorandum ("TRM") directed to this Hearing Officer and dated May 23, 2013. With regard to the comments and requests set forth by the Sierra Club, the Department notes that the revised language in Section 1.2 of Regulation 1108, as published in the April 1, 2013 edition of the Delaware Register of Regulations, was not intended to add fluid catalytic cracking as an exempted operation. Instead, it was intended to clarify the fact that catalyst regeneration, an already exempted activity, applies only to catalyst regeneration in fluid catalytic cracking operations. The Department believed that this clarification was needed because there are other catalyst regeneration processes at the refinery besides those associated with catalytic cracking.

Additionally, in response to Sierra Club's comments that the proposed language could be better stated, certain wording was restated in Section 1.2 to provide better clarity and understanding for the reader (it should be noted that this change is not substantive in nature). The Department does not, however, agree with Sierra Club's request of removing Section 1.2 from the regulation. In response, DAQ notes that the units exempted in Section 1.2 are covered by relevant requirements in the facility permit regarding SO₂ emission controls. The proposed revision to 7 DE Admin Code 1108 is not intended to change that status.

Turning to the Department's response to the comments submitted by DoD, the DAQ believes that Regulation 1108 is not intended to regulate mobile source fuels, as sulfur contents in mobile source fuels are regulated under the U.S. EPA rules, which include the exemptions sought by the Department of Defense. Therefore, the DAQ believes no change to the proposed language is necessary in light of the comment presented by the DoD.

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 *revised* 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 these proposed amendments. It should also be noted that the Department has reviewed this proposed promulgation 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 these proposed *revised* amendments to 7 DE Admin. Code 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment. I also recommend the adoption of the proposed *revised* regulatory amendments, based upon the reasoning as set forth by the Department's Division of Air

Quality. Accordingly, I recommend promulgation of these proposed amendments 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 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. The Department has reviewed these proposed *revised* amendments 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;
5. The aforementioned proposed *revised* amendments to 7 DE Admin. Code 1108 will enable Delaware to do the following: (1) revise the current sulfur content limit in residual fuel from 1% to 0.5%; (2) revise the current sulfur content limit in distillate fuel from the current 0.3% to 15 ppm; (3) for any other fuel, the current sulfur limit of 1% shall remain; (4) all aforementioned sulfur content limits shall apply to all three counties of Delaware; (5) the compliance date for said sulfur content limits shall be July 1, 2016; (6) revise Section 4.2 to allow using ASTM method D2622, and any alternative method found in 40 CFR 80.580, to provide flexibility; (7) create a detailed certification and recordkeeping section; and (8) provide clarifying language to

the existing language contained in 7 DE Admin. Code 1108, as so to provide clarity and a better understanding to the general public and the regulated community with regard to this regulation;

6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed *revised* amendments to these regulations, as published in the April 1, 2013 *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, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit the proposed *revised* 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

APPENDIX "A"

PROPOSED REGULATIONS

- 1) This regulatory action changes the number of children in "Child Care Centers" from 12 or more to 13 or more; and,
- 2) The definition of "Large Family Child Care Home" is amended to simplify the language and to add licensing compliance language.

DSS PROPOSED REGULATION #13-11

REVISION:

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

Large Family Child Care Home

~~A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver. A private residence other than the child's residence or a non-residential site where licensed care is provided for seven to twelve children who are not related to the caregiver. The site must be in compliance with Municipal, City and State licensing requirements.~~

***Please Note: As the rest of the definitions were not amended, they are not being published here. A complete copy of the proposed regulation is available at:**

DSSM: 11002.9; Child Care Subsidy Program Definitions and Explanation of Terms

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60, (7 Del.C. Ch. 60)

7 DE Admin. Code 1108

1108 Sulfur Dioxide Emissions From Fuel Burning Equipment

REGISTER NOTICE

SAN #2012-06

1. TITLE OF THE REGULATIONS:

Revision to 7 DE Admin. Code 1108 "Sulfur Dioxide Emissions from Fuel Burning Equipment."

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Division of Air Quality (DAQ) of the Department is proposing to revise Delaware 7 DE Admin. Code 1108 to lower the allowable content of sulfur in fuels combusted in Delaware, and to effectively reduce the emissions of sulfur dioxide (SO₂) into the atmosphere, which will aid in the attainment and maintenance of Delaware's air quality relative to the SO₂ and fine particulate matter National Ambient Air Quality Standards (NAAQS). The reduction will also reduce acid rain, and will aid in reaching visibility goals of the federal regional haze program.

In brief, DAQ proposes to lower sulfur content in residual fuel from 10,000 ppm to 5,000 ppm, in distillate fuel from 3,000 ppm to 15 ppm, and to set up a compliance date of July 1, 2016. DAQ also proposes to add necessary recordkeeping and reporting requirements to ensure compliance of the regulation. DAQ proposes that the new limits apply to all three counties in Delaware.

In addition, the Department will submit the revision of 7 DE Admin Code 1108, after being finalized, to the U.S. Environmental Protection Agency (EPA) as a revision to Delaware's state implementation plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on April 24, 2013, beginning at 6:00 pm, in the conference room (Room 220) of Kent County Complex, 555 South Bay Road, Dover, Delaware 19901.

7. PREPARED BY:

Frank F. Gao Phone: (302) 323-4542 Date: March 13, 2013 E-Mail: Frank.Gao@state.de.us

1108 Sulfur Dioxide Emissions from Fuel Burning Equipment

~~42/08/1983~~ xx/xx/2013

1.0 General Provisions

- 1.1 The emission of sulfur dioxide (SO_2) from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 ~~The provisions of this regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7-DE Admin. Code 1102.~~
- 1.32 This regulation shall not apply to fuels used in fluid coking, fluid catalytic cracking or catalyst regeneration.
- 1.43 This regulation shall not apply to fuels used by watercraft.

~~05/09/1985~~ xx/xx/2013

2.0 Limit on Sulfur Content of Fuel

- 2.1 ~~Except as provided in 2.2 of this regulation~~ Prior to July 1, 2016, no person shall offer for sale, sell, deliver, or purchase any fuel having a sulfur content greater than 1.0% by weight when such fuel is intended for use in any fuel burning equipment in New Castle County. No person shall use any fuel having a sulfur content greater than 1.0% by weight in any fuel burning equipment in New Castle County.
- 2.2 ~~No~~ Prior to July 1, 2016, no person shall offer for sale, sell, deliver or purchase, or use in any fuel burning equipment, distillate fuel oil having a sulfur content greater than 0.3% by weight.
- 2.3 ~~Oil Sampling Method—Oil samples shall be obtained using proper American Society for Testing and Materials (ASTM) methods or alternative methods approved by the Department. On and after July 1, 2016, no person shall offer for sale, sell, deliver, or purchase any fuel having a sulfur content greater than the limits specified in 2.3.1 through 2.3.3 of this regulation, when such fuel is intended for use in any fuel burning equipment in Delaware, and no person shall use any fuel having a sulfur content greater than the limits specified in 2.3.1 through 2.3.3 of this regulation in any fuel burning equipment in Delaware.~~
 - 2.3.1 For a distillate fuel, except as provided for in 2.4 of this regulation, 15 ppm by weight;
 - 2.3.2 For a residual fuel, 0.5% by weight;
 - 2.3.3 For any other fuel, 1.0% by weight.
- 2.4 ~~Sulfur concentrations of residual and distillate fuels shall be determined by the x-ray absorption or the Parr oxygen bomb technique.~~ Transition Period for Distillate Fuel. Fuel having a sulfur content that

PROPOSED REGULATIONS

meets the limit as specified in 2.2 of this regulation but is greater than the limit specified in 2.3.1 of this regulation may be offered for sale, sold, delivered, purchased, and used in Delaware on and after July 1, 2016 only as specified in 2.4.1 and 2.4.2 of this regulation.

- 2.4.1 Distillate fuel stored within Delaware prior to July 1, 2016 may be offered for sale, sold, purchased, or delivered for use in any fuel burning equipment in Delaware through June 30, 2017, provided records are kept for a period of two (2) years which document and certify the fuel was stored within Delaware prior to July 1, 2016.
- 2.4.2 Distillate fuel that meets the requirements of 2.4.1 of this regulation that is purchased and received for use on or before June 30, 2017 may be used in any fuel burning equipment in Delaware after June 30, 2017.

05/09/1985 xx/xx/2013

3.0 Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation

~~The limits on sulfur content established by 2.0 of this regulation shall not apply to any fuel burning equipment employing emission control which limits sulfur dioxide emission to that which would result from burning, without emission control, a fuel permitted by 2.0 of this regulation. Any fuel burning equipment employing emission controls of SO₂, being covered by a permit issued pursuant to 7 DE Admin. Code 1102, which limits SO₂ emissions to less than that which would result from burning, without emission control, a fuel meeting the corresponding sulfur content limit in 2.0 of this regulation, may use fuel with a sulfur content greater than the corresponding limit in 2.0 of this regulation.~~ In order to employ an emission control rather than sulfur content limits as a means of complying with this Regulation, an owner or operator of fuel burning equipment must demonstrate to the Department in advance that the equivalent emission will be achieved.

xx/xx/2013

4.0 Sampling and Testing Methods and Requirements

- 4.1 Oil samples shall be obtained using standard American Society for Testing and Materials (ASTM) methods ASTM D4057-06 "Practice for Manual Sampling of Petroleum and Petroleum Products," or any alternative method approved by the Department and the U.S. Environmental Protection Agency (EPA).
- 4.2 Sulfur concentrations of residual fuels and distillate fuels shall be determined by the following method:
- 4.2.1 The standard ASTM method D2622-10 "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," or
- 4.2.2 Any alternative method specified in Title 40, Code of Federal Regulations, Part 80, Section 580 (July 2012 edition), or
- 4.2.3 Any alternative method approved by the Department and the EPA.
- 4.3 Any refinery subject to 2.0 of this regulation shall sample and determine the actual sulfur content of each batch of fuel oil they produce that is subject to 2.0 of this regulation, using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.
- 4.4 Any person subject to 2.0 of this regulation that sells or delivers a batch or shipment of fuel oil that was blended, or came in contact, with any fuel oil or fuel additive that is not established as compliant with the requirements of 2.0 of this regulation based on sampling and testing using the methods specified in 4.1 and 4.2, or based on records received from the transferor pursuant to 5.1 of this regulation, shall sample and determine the actual sulfur content of that batch or shipment using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.
- 4.5 Any person subject to 2.0 of the regulation that is not covered under 4.3 or 4.4 of this regulation shall, for each batch or shipment of fuel oil they sell or deliver:
- 4.5.1 Establish the sulfur content based on records they received from the transferor pursuant to 5.1 of this regulation, or

- 4.5.2 Sample and determine the actual sulfur content using the sampling and testing methods specified in 4.1 and 4.2 of this regulation.

xx/xx/2013

5.0 Recordkeeping and Reporting

- 5.1 Three (3) months after this revision of this regulation becomes effective, any person subject to 2.0 of this regulation, when selling or delivering any fuel oil to be used in Delaware (i.e., the transferor), shall provide to the person receiving the fuel oil (i.e., the transferee) an electronic or paper record that contains the following information:
- 5.1.1 Name, address and telephone number of the transferor.
- 5.1.2 Name, address and telephone number of the transferee, and the address where the fuel oil is delivered.
- 5.1.3 The volume of fuel being sold or delivered, and the date of sale or delivery.
- 5.1.4 The type of fuel, and the sulfur content of the fuel as a delivered product, determined pursuant to 4.3, 4.4, or 4.5 of this regulation, as applicable, and expressed as one of the following:
- 5.1.4.1 The actual sulfur content in ppm or percent (%) by weight, or
- 5.1.4.2 A statement that certifies the sulfur content of the shipment is equal to or below the applicable limit specified in 2.0 of this regulation, or
- 5.1.4.3 Except for a sale or delivery to an ultimate consumer, a product code or product description that identifies the sulfur content of the shipment as equal to or below the applicable limit specified in 2.0 of this regulation, provided such code or description is standardized throughout the distribution system in which it is used, and each downstream party is given sufficient information to know its full meaning.
- 5.2 Any person subject to 5.1 and 4.3, 4.4, or 4.5 of this regulation shall maintain records, for a minimum period of two (2) years from the date the records were generated, in electronic or paper format, that document the determination or establishment of the actual sulfur content of each batch or shipment of fuel oil.
- 5.3 Any person complying with 5.1.4.3 of this regulation shall maintain records, for a minimum period of two (2) years from the date the records were generated, in electronic or paper format, that document and explain the product code or product descriptions used.
- 5.4 For any transferee subject to requirements of a permit issued pursuant to 7 DE Admin. Code 1102, the records established pursuant to 5.1 of this regulation shall be maintained by the transferee for a minimum period of two (2) years from the date the record was generated.
- 5.5 The records as established pursuant to 5.2, 5.3, and 5.4 of this regulation shall be provided to the Department, upon written request by the Department, within thirty (30) days after such request is received.

DIVISION OF WATERSHED STEWARDSHIP
Statutory Authority: 7 Delaware Code, Chapter 40 (7 Del.C. Ch.40)
7 DE Admin. Code 5101

5101 Sediment and Stormwater Regulations

REGISTER NOTICE
SAN #2006-16

- 1. Title Of The Regulations:**
Delaware Sediment and Stormwater Regulations