

Secretary's Order No.: 2011-A-0020

**RE: Approving as Final Supplement to Delaware's Sept. 16, 2009
CAA Section 110, "Infrastructure" State Implementation Plan (SIP) Submission**

Date of Issuance: March 16, 2011

Effective Date of the Amendment: April 11, 2011

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 State Implementation Plan (SIP) document that will be submitted by DNREC to the Environmental Protection Agency ("EPA") to supplement Delaware's September 16, 2009 CAA Section 110 "Infrastructure" State Implementation Plan (SIP) Submission. The Department's previous SIP submission of September 16, 2009, titled *State Implementation Plan for Meeting the Infrastructure Requirements of the Clean Air Act for Fine Particulate Matter*, was submitted to the EPA to satisfy the requirements of Section 110(a)(1) and 110(a)(2) of the Clean Air Act ("CAA") regarding the National Ambient Air Quality Standards ("NAAQS") for Fine Particles (PM_{2.5}) promulgated by the EPA on October 17, 2006 (71 FR61224).

Delaware's September 16, 2009 SIP revision explained, among other things, how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I) for interstate transport. The SIP revision that the Department is currently proposing supplements the September 16, 2009 SIP revision by adding a technical analysis that explains and

demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources.

It should be noted that on December 8, 2010, the Department submitted the same supplemental technical analysis that it is currently proposing to the EPA, and requested that EPA process it in parallel with any rulemaking on its September 16, 2009 SIP submission while DNREC completes the public participation procedures necessary to make a formal SIP revision request. This is known as “parallel processing”, and is detailed in 40 CFR Part 51 Appendix v at 2.3.1. This was done to enable EPA to consider this technical analysis in any rulemaking it takes on Delaware’s September 16, 2009 submittal between now and the date the complete formal submittal of this SIP supplement is made by DNREC to EPA.

It should be noted that the Department received no public comment at any phase of this promulgation process, including, but not limited to, at the time of the public hearing on February 1, 2011. Proper notice of the hearing was provided as required by law.

The Department published the proposed supplemental SIP submission in the January 1, 2011 *Delaware Register of Regulation* and held a public hearing on February 1, 2011. The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated March 8, 2011 (Report). The Report recommends certain findings

and the adoption of the proposed supplemental SIP submission as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed supplemental SIP submission is 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 expert developed the record and drafted the proposed supplemental SIP. Throughout the entire regulatory development process regarding this promulgation, the Department received no public comments from the regulated community, as noted in the Report.

I find that the Department's DAQ expert fully developed the record to support adoption of this proposed supplemental SIP submission. With this adoption of this promulgation, the Department will be enabled to supplement its September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;

2.) The Department provided adequate public notice of the proposed supplemental SIP submission, and provided the public with an adequate opportunity to comment on the same, including at a public hearing;

3.) The Department held a public hearing on February 1, 2011 on the proposed supplemental SIP submission in order to consider public comments before making any final decision, however, the Department received no public comments concerning this matter;

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

5.) The recommended supplemental SIP submission does not reflect any substantive change from the proposed supplemental SIP submission as published in the February 1, 2011, *Delaware Register of Regulations*;

6.) The recommended supplemental SIP submission should be adopted as final because Delaware will then be enabled to supplement its September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources. Moreover, the supplemental SIP submission is well supported by documents in the record; and

7.) The Department shall submit this Order approving the final supplemental SIP submission 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 Supplement to Delaware's Sept. 16, 2009 CAA Section 110,
"Infrastructure" State Implementation Plan (SIP) Submission

DATE: March 11, 2011

I. Background:

A public hearing was held on Tuesday, February 1, 2011, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware auditorium to receive comment on a proposed State Implementation Plan (SIP) document that will be submitted by DNREC to the Environmental Protection Agency ("EPA") to supplement Delaware's September 16, 2009 CAA Section 110 "Infrastructure" State Implementation Plan (SIP) Submission. The Department's previous SIP submission of September 16, 2009, titled *State Implementation Plan for Meeting the Infrastructure Requirements of the Clean Air Act for Fine Particulate Matter*, was submitted to the EPA to satisfy the requirements of Section 110(a)(1) and 110(a)(2) of the Clean Air Act ("CAA") regarding the National Ambient Air Quality Standards ("NAAQS") for Fine Particles (PM_{2.5}) promulgated by the EPA on October 17, 2006 (71 FR61224).

Delaware's September 16, 2009 SIP revision explained, among other things, how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I) for interstate transport. The SIP revision that the Department is currently proposing supplements the September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources.

It should be noted that on December 8, 2010, the Department submitted the same supplemental technical analysis that it is currently proposing to the EPA, and requested that EPA process it in parallel with any rulemaking on its September 16, 2009 SIP submission while DNREC completes the public participation procedures necessary to make a formal SIP revision request. This is known as "parallel processing", and is detailed in 40 CFR Part 51 Appendix v at 2.3.1. This was done to enable EPA to consider this technical analysis in any rulemaking it takes on Delaware's September 16, 2009 submittal between now and the date the complete formal submittal of this SIP supplement is made by DNREC to EPA.

It should be noted that the Department received no public comment at any phase of this promulgation process, including, but not limited to, at the time of the public hearing on February 1, 2011. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on February 1, 2011, Ron Amirikian, Planning Branch Manager of the Department's Division of Air Quality Management (AQM), offered the Department's six (6) exhibits pertaining to the aforementioned supplemental SIP submission, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits were copies of the legal notices regarding the availability of these documents for public view and the holding of this public hearing on February 1, 2011, and copies of the actual proposed supplemental SIP submission as referenced above.

Following the inclusion of the Department's six (6) exhibits into the public hearing record, the floor was then open for acceptance of public comment concerning the same. As noted previously, no public comments were received by the Department concerning this matter.

For the Secretary's review, and in order for the Secretary to gain an in-depth understanding of this proposed promulgation, a copy of the supplemental SIP submission is formally attached hereto as Appendix "A", and the same is 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 the proposed Supplement to Delaware's September 16, 2009 CAA Section 110 "Infrastructure" State Implementation Plan (SIP) Submission. Accordingly, I recommend promulgation of this proposed supplemental SIP submission 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 considered all timely and relevant public comments in making its determination;
5. The Department has reviewed these 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;

6. Promulgation of this supplemental SIP submission will enable the Department to supplement its September 16, 2009 SIP revision by adding a technical analysis that explains and demonstrates in additional detail how Delaware has satisfied the requirements of CAA 110(a)(2)(D)(i)(I), addressing interstate transport by demonstrating that Delaware has fulfilled its requirements to control sources that contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard(s) which address downwind contributions (interstate transport) from Delaware sources;
7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
8. The Department's proposed supplemental SIP submission, as published in the January 1, 2011 *Delaware Register of Regulations* and as set forth within Appendix "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it 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

9. The Department shall submit the proposed supplemental SIP submission 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.

/s/ Lisa A. Vest
LISA A. VEST
Public Hearing Officer