

Secretary's Order No.: 2011-A-0021

**RE: Approving Final Amendments to 7 DE Admin. Code 1124,
Control of Volatile Organic Compound Emissions: Section 47.0,
“Offset Lithographic Printing”**

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 proposed regulation amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 47.0, “Offset Lithographic Printing”. The purpose of these proposed amendments is to conform to new Control Techniques Guidelines (CTG) issued by the U.S. Environmental Protection Agency (EPA).

Section 182(b)(2) of the Clean Air Act requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology controls on emission sources covered in the U.S. Environmental Protection Agency (“EPA”)’s Control Techniques Guidelines (“CTG”), or Alternative Control Techniques, and submit the regulations to EPA as State Implementation Plan revisions.

Section 47.0 was originally developed in 1994 after EPA issued a CTG in 1993 for control of volatile organic compound (VOC) emissions from the offset lithographic printing industry. In September 2006, the EPA updated its CTG for the offset lithographic printing industry by adding control requirements for letterpress printing operations. To reflect the new requirements in EPA's 2006 CTG, the Department's Division of Air Quality ("DAQ") revised 7 DE Admin. Code 1124, Section 47.0, "Offset Lithographic Printing" in early 2010. The 2010 revision expanded the control scope to include letterpress printing presses, and set up a new and more stringent 95% reduction standard for those control systems installed after the effective date of the proposed revision. After a relevant public comment period, a public hearing was held on June 2, 2010.

Two organizations, Printing Industries of America ("PIA") and Graphic Arts Association ("GAA") submitted comments regarding the proposed Section 47.0 prior to the June 2, 2010 hearing. Based on these comments, DAQ determined that substantive changes to the proposed Section 47.0, as set forth in the public hearing of June 2, 2010, were necessary. Two major changes are (1) specifying a one-year transition period for facilities to comply with the new requirements, and (2) providing flexibility for facilities to locate temperature monitoring devices for control systems. These new and substantive changes are reflected in Sections 47.1.2, 47.3.1, 47.5.4.4, 47.4.4, 47.6.1.2.2, and 47.6.3.1. To provide the opportunity for the public to review and comment on these new changes, the Department published a new and revised proposed Section 47.0, established a new public comment period, and scheduled a second public hearing on February 1, 2011 to specifically address those new changes.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2010-25. The Department published the proposed regulatory amendments in the January 1, 2011 *Delaware Register of Regulations* 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 *revised* Amendments 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 in DAQ developed the record and drafted the proposed Amendments. It should be noted that, while the Department received public comments once again from GAA with regard to the proposed *revised* amendments to the aforementioned Section 47.0 of 7 DE Admin. Code 1124, the Department believes that no additional revisions to this proposed regulatory language is necessary at this time.

I find that the Department's experts in DAQ fully developed the record to support adoption of these *revised* Amendments. With the adoption of these *revised* regulatory amendments, Delaware will have the Department's regulations conform to EPA's regulations, as required by the Clean Air Act.

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 *revised* Amendments, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at a public hearing;

3.) The Department held public hearings, initially on June 2, 2010, and then again on February 1, 2011 on the proposed *revised* Amendments, in order to consider public comments 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 were fully vetted to the public, both in legal notices and at the time of the public hearing, and do not reflect any substantive changes from the proposed *revised* regulation Amendments as published in the January 1, 2011, *Delaware Register of Regulations*;

6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to new CTG as issued by the EPA; (2) the Department's revisions to Section 47.0 of 7 DE Admin. Code 1124 will enable Delaware to do the following: (i); specify a one-year transition period for facilities to comply with the new requirements, (ii) provide flexibility for facilities to locate temperature monitoring devices for control systems; and (3) the *revised* regulation amendments are well supported by documents in the record; and that

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.

/s/ Collin P. O'Mara
Collin P. O'Mara
Secretary

hear\ Reg.1124.Sect.47.Amndmts. 2011.ORD.

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 1124, Control of Volatile Organic Compound Emissions; Section 47.0, "Offset Lithographic Printing"

DATE: March 8, 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 to receive comment on proposed amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 47.0, "Lithographic Printing". The purpose of these proposed amendments is to conform to new Control Techniques Guidelines (CTG) issued by the U.S. Environmental Protection Agency (EPA).

Section 182(b)(2) of the Clean Air Act (CAA) requires all ozone non-attainment areas, including Delaware, to update relevant regulations for Reasonably Available Control Technology (RACT) controls for emission sources covered in EPA's CTG, and to submit the regulations to EPA as State Implementation Plan (SIP) revisions. Section 47.0 was originally developed in 1994 after EPA issued a CTG in 1993 for control of volatile organic compound (VOC) emissions from the offset lithographic printing

industry. In September 2006, the EPA updated its CTG for the offset lithographic printing industry by adding control requirements for letterpress printing operations. To reflect the new requirements in EPA's 2006 CTG, the Department's Division of Air Quality ("DAQ") revised 7 DE Admin. Code 1124, Section 47.0, "Offset Lithographic Printing" in early 2010. The 2010 revision expanded the control scope to include letterpress printing presses, and set up a new and more stringent 95% reduction standard for those control systems installed after the effective date of the proposed revision. After a relevant public comment period, a public hearing was held on June 2, 2010.

Two organizations, Printing Industries of America ("PIA") and Graphic Arts Association ("GAA") submitted comments regarding the proposed Section 47.0 prior to the June 2, 2010 hearing. Based on these comments, DAQ determined that substantive changes to the proposed Section 47.0, as set forth in the public hearing of June 2, 2010, were necessary. Two major changes are (1) specifying a one-year transition period for facilities to comply with the new requirements, and (2) providing flexibility for facilities to locate temperature monitoring devices for control systems. These new and substantive changes are reflected in Sections 47.1.2, 47.3.1, 47.5.4.4, 47.4.4, 47.6.1.2.2, and 47.6.3.1. To provide the opportunity for the public to review and comment on these new changes, the Department published a new and revised proposed Section 47.0, established a new public comment period, and scheduled a second public hearing on February 1, 2011 to specifically address those new changes.

On January 4, 2011, DAQ e-mailed PIA and GAA, informing them of the hearing on February 1, 2011. A copy of DAQ's responses to each of their prior comments was provided with said email. It should be noted that, although responses to this email were

received from GAA on the afternoon of February 1, 2011, the Department did not recommend any changes to the proposed regulatory language as a result of the same. No other comments were received by the Department concerning this matter. 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, 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 February 1, 2011, a copy of the Control Techniques Guidelines (CTG) from the EPA which triggered the revisions addressed within this promulgation, copies of PIA/GAA's comments of June 2, 2010 and the DAQ's responses to the same, a copy of the most recent correspondence from GAA (dated February 1, 2011), and copies of the actual proposed amendments to Section 47.0 of 7 DE Admin. Code 1124.

Also contained within the Department's exhibits was a revised version of the proposed amendments on Section 47.0 of existing Regulation 1124, which included some additional regulatory language from the original revised language that appeared in the January 2011 edition of the Delaware *Register of Regulations*. DAQ made one addition to the proposed Section 47.0, specifically, in 47.6.3.1, a phrase "and EPA" has been added after the phrase "...approved by the Department." To serve as background in support of this change, DAQ explained at the time of the hearing that EPA has recently

identified that some of Delaware's SIP regulations have provisions that allow alternate or unspecified testing, monitoring or recordkeeping methods under the condition of prior approval by the Department. EPA has indicated that the Department should make such methods be approved by EPA as well. In Section 47.0, DAQ believed there to be two such provisions, and so the same was discussed with EPA. In an e-mail response to the Department's inquiries in this matter, EPA indicated that a phrase "and EPA" should be added in both provisions. After careful review and analysis, DAQ decided that the phrase "[approval] by EPA" should be added in Section 47.6.3.1, where an unspecified temperature monitoring location would be allowed for flexibility. In the other provision, i.e., Section 47.6.4.4, where alternative recordkeeping schedules would be approved by the Department, DAQ believes that the Department has the authority to ensure through approval process that the alternate schedules will meet EPA's requirements. Therefore, the phrase "approval by EPA" is not necessary in the latter section.

With regard to the additional comments received by the Department from GAA on February 1, 2011, the DAQ reviewed the same and determined that (1) most of the February 1, 2011 comments had already been provided to the Department previously in PIA/GAA's comments dated June 2, 2010, and had therefore been thoroughly addressed and responded to by the Department; (2) none of the February 1, 2011 comments concerned the *new* changes which were the subject of the February 1, 2010 public hearing; and (3) only two comments were relevant for indicating inappropriate wording and clerical errors in the presently proposed revision to Section 47.0. The DAQ has now corrected those errors, and, given the fact that these corrections were non-substantive in

nature, there is no need for any additional publication and/or public hearing concerning this promulgation.

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 *revised* amendments. 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 these proposed *revised* amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 47.0, "Offset Lithographic Printing". I also recommend the adoption of the proposed *revised* regulatory amendments, based upon the reasoning provided by DAQ. 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 considered all timely and relevant public comments in making its determination;
5. 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;
6. Promulgation of the aforementioned proposed *revised* amendments to Section 47.0 of 7 DE Admin. Code 1124 will allow Delaware to conform to new Control Techniques Guidelines (CTG) documents as issued by the EPA;
7. The aforementioned proposed *revised* amendments to 7 DE Admin. Code 1124 will enable Delaware to do the following: (1) specify a one-year transition period for facilities to comply with the new requirements; (2) provide flexibility for facilities to locate temperature monitoring devices for control systems; and (3) insert the phrase “[approval] by EPA” in Section 47.6.3.1, where an unspecified temperature monitoring location would be

allowed for flexibility, and that such allowance should be approved by EPA as well as the Department;

8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed *revised* amendments to these regulations, as published in the January 1, 2011 *Delaware Register of Regulations* and the subsequent revisions to the same, as vetted to the public at the time of the hearing on February 1, 2011 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
10. 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.

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