



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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Secretary's Order No.: 2013-A-0001

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1125,
*Requirements for Preconstruction Review, Section 1.9 ("Definitions")***

Date of Issuance: May 9, 2013

Effective Date of the Amendment: June 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 regulations to amend 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9 ("Definitions"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-18. The Department published its initial proposed Regulation Amendments in the September 1, 2012 *Delaware Register of Regulations*, and held a public hearing on September 27, 2012. It should be noted that the only public comment received by the Department in this matter came from the Delaware Solid Waste Authority at the time of the aforementioned public hearing, and that such comment voiced support for this proposed action.

Delaware's Good Nature depends on you!

The proposed amendments to 7 DE Admin. Code 1125 will enable the Department to revise Section 1.9 of Regulation 1125 to include in the definition for “Greenhouse Gases (GHG)” that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated March 22, 2013 (Report). The Report recommends certain findings and the adoption of the proposed 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 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 Amendments. With the adoption of this Order, Delaware will be enabled to incorporate federal rule language contained in the three-year deferral rule (76 FR 43490 – July 20, 2011) to exempt new source review permitting of facilities emitting biogenic sourced carbon dioxide (CO₂).

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 September 27, 2012;
- 3.) The Department held a public hearing on September 27, 2012 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 Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration; (2) effectively mirror the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) 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 Amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review: Section 1.9 ("Definitions")

DATE: March 22, 2013

I. Background:

A public hearing was held on Thursday, September 27, 2012, 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 1125, Requirements for Preconstruction Review: Section 1.9 ("Definitions"). The Department proposes to revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.

Biogenic sourced CO₂ is emissions from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil

fuels and mineral sources of carbon. Examples include CO₂ from (1) biological decomposition of waste in landfills, wastewater treatment or manure management processes; (2) combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes; (3) combustion of the biological fraction of municipal solid waste or biosolids; (4) combustion of the biological fraction of tire-derived fuel; (5) fermentation during ethanol production; and (6) combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

As noted above, the Department held a public hearing to receive comment on this proposed promulgation on Thursday, September 27, 2012. 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 aforementioned public hearing, Gene Pettingill, an Environmental Engineer in the Planning Branch of the Department's Division of Air Quality ("DAQ") offered the Department's twelve (12) 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 Notice for this promulgation (SAN2012-18), copies of the legal notices regarding the holding of this public hearing, and copies of the actual proposed amendments to the aforementioned affected sections of 7 DE Admin. Code 1125.

Mr. Pettingill then offered a brief summary regarding this proposed promulgation. On December 11, 2010, the Department's proposed revisions to 7 DE Admin Code 1125

(which incorporated federal new source review requirements to enable permitting sources emitting threshold and above amounts of greenhouse gases, or “GHG”) became effective. The federal rule, often called the “Tailoring Rule”, 75 FR 31514 (June 3, 2010), listed six gases considered GHG, which included CO₂. The Tailoring Rule did not exempt biogenic sourced CO₂.

Subsequently, on August 3, 2010, the Alliance of Forest Owners (NAFO) petitioned EPA to stay implementation of the Tailoring Rule to allow reconsideration of an exemption for biogenic sourced CO₂. NAFO claimed there was near universal recognition that CO₂ emitted from combustion of fuels derived from biomass should be excluded from GHG regulations because production and combustion of such fuels do not increase atmospheric CO₂ levels. After a thorough study of this issue, on January 12, 2011, EPA, believing there was sufficient uncertainty concerning the net atmospheric impact of biogenic CO₂ emissions, granted the NAFO petition. On July 20, 2011, the final rule (76 FR 43490), deferring permitting of biogenic CO₂ sources for three years was finalized.

EPA reported that, during the aforementioned three year deferral period, they would “...conduct a detailed examination of the science associated with biogenic CO₂ emissions from stationary sources. This study will consider technical issues that the Agency must resolve in order to account for biogenic CO₂ emissions in ways that are scientifically sound and also manageable in practice.” The Department’s Division of Air Quality (DAQ) then informed the Delaware Solid Waste Authority (DSWA) that Delaware would honor the deferral, but that DNREC would not revise Regulation 1125, as the federal rule did not seem to require such action.

At a DNREC public hearing on June 25, 2012 (the purpose of which was to revise Regulation 1125 for other reasons), the DSWA proposed that, in addition to DNREC's proposed revisions, Regulations 1125 also be revised to incorporate EPA's Biogenic Deferral. Of note is the fact that DSWA has the only stationary source in Delaware impacted by the federal Biogenic Deferral Rule, to wit: the Cherry Island landfill. Based upon this DSWA comment, and after considerable Departmental discussion and review of the federal deferral rule (including discussions with EPA), the DAQ agreed with the DSWA to propose to incorporate the deferral language into Regulation 1125. However, the DAQ did not believe that such change should be made at that time, due to the fact that this issue was not related to the subject matter of the June 25, 2012 public hearing, and that the deferral had not been subject to Delaware's public review and comment. Thus, the purpose of this promulgation is to finally incorporate the aforementioned federal rule language contained in the aforementioned EPA three-year deferral rule into 7 DE Admin. Code 1125, which will exempt new source review permitting of facilities emitting biogenic sourced carbon dioxide (CO₂).

Following the Department's presentation at the public hearing, comment was received once again by the Delaware Solid Waste Authority ("DSWA"), voicing support for this proposed revision to 7 DE Admin. Code 1125. No other comment was received by the Department concerning this proposed 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 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 the proposed amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review; Section 1.9 (“Definitions”). I also recommend the adoption of the proposed 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 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 amendments to 7 DE Admin. Code 1125 will enable Delaware to revise Section 1.9 of Regulation 1125 to include in the definition for “Greenhouse Gases (GHG)” that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department’s proposed amendments to these regulations, as published in the September 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, 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 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”

Phone: (302) 744-4700

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***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

4459 Lead Based Paints Hazards

**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 1125

REGISTER NOTICE SAN 2012-18; SAN 2012-12

1. TITLE OF THE REGULATION:

7 DE Admin. Code 1125, *Requirements for Preconstruction Review*

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

The Department proposes to revise Section 1.9, Definitions of 7 DE Admin. Code 1125, to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011) temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.

The Department also proposes to revise Section 2 of 7 DE Admin. Code 1125 to increase the availability of emission offsets. Under the new source review permitting program (7 DE Admin. Code 1125) for stationary sources located in non-attainment areas, a proposed new or modified source exceeding established emission thresholds of ground-level ozone precursors must meet requirements that include the requirement to obtain emission "offsets" in an amount greater than the projected source emissions. Since Delaware sources are now well-controlled, the availability of offsets is costly and limited. The purpose of this revision is to expand the area where offsets can be obtained to an area that encompasses the 15 states that significantly contribute to Delaware's ozone nonattainment problem.

The Department will submit these changes to the Environmental Protection Agency as a revision to the State Implementation Plan (SIP).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None.

6. NOTICE OF PUBLIC COMMENT:

The Department will hold a public hearing on these proposed amendments on Thursday, September 27, 2012, starting at 6:00 pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to David Fees, Division of Air Quality, 655 S. Bay Road, Suite

5N, Dover, DE and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees (302-739-9402)

August 6, 2012

1125 Requirements for Preconstruction Review

~~08/11/12~~ xx/xx/xx

1.0 General Provisions

- 1.1 Requirements of this regulation are in addition to any other requirements of the State of Delaware Regulations Governing the Control of Air Pollution.
- 1.2 Any stationary source which will impact an attainment area or an unclassifiable area as designated by the U.S. Environmental Protection Agency (EPA) pursuant to Section 107 of the Clean Air Act Amendments of 1990 (CAA), is subject to the provisions of 3.0 of this regulation, Prevention of Significant Deterioration (PSD).
- 1.3 Any stationary source which will impact a non-attainment area as designated by the EPA pursuant to Section 107 of the CAA is subject to 2.0 of this regulation, Emission Offset Provisions (EOP).
- 1.4 A source may be subject to PSD for one pollutant and to EOP for another pollutant, or may affect both attainment or unclassifiable areas and a non-attainment area for the same pollutant.
- 1.5 Any emission limitation represented by Lowest Achievable Emission Rate (LAER) may be imposed by the Department pursuant to regulations adopted under 2.0 of this regulation herein notwithstanding any emission limit specified elsewhere in 7 DE Admin. Code 1100 Regulations Governing the Control of Air Pollution.
- 1.6 Any emission limitation represented by Best Available Control Technology (BACT) may be imposed by the Department pursuant to regulations adopted under 3.0 of this regulation herein notwithstanding any emission limit specified elsewhere in 7 DE Admin. Code 1100, Regulations Governing the Control of Air Pollution.
- 1.7 No stationary source shall be constructed unless the applicant can substantiate to the Department that the source will comply with any applicable emission limit or New Source Performance Standard or Emission Standard for a Hazardous Air Pollutant as set forth in 7 DE Admin. Code 1100 Regulations Governing the Control of Air Pollution.
- 1.8 Any stationary source that implements, for the purpose of gaining relief from 3.0 of this regulation, by any physical or operational limitation on the capacity of the source to emit a pollutant, including (but not limited to) air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design and the limitation or the effect it would have on emissions is enforceable, not withstanding any emission limit specified elsewhere in 7 DE Admin. Code 1100 Regulations Governing the Control of Air Pollution. If a source petitions the Department for relief from any resulting limitation described above, the source is subject to review under 2.0 and 3.0 of this regulation as though construction had not yet commenced on the source or modification.
- 1.9 Definitions - For the purposes of this regulation
 - “**Actual Emissions**” means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with the three subparagraphs below.
 - In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

- The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- For any emissions unit, which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“Allowable Emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits, which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

The applicable standards

- as set forth in 7 DE Admin. Code 1120 and 1121;
- Other applicable Delaware State Implementation Plan emissions limitations, including those with a future compliance date; or
- The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“Baseline Area” means any intrastate area (and every part thereof) designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact of the pollutant for which the baseline date is established, as follows: equal to or greater than one $\mu\text{g}/\text{m}^3$ (annual average) for SO_2 , NO_2 , or PM_{10} ; or equal to or greater than 0.3 $\mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

- Area redesignations cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
 - Establishes a minor source baseline date, or
 - Is subject to this regulation.

“Baseline Concentration” means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- The actual emissions representative of sources in existence on the applicable minor source baseline date, except as listed under Exceptions below.
- The allowable emissions of major stationary sources which commenced construction before the major source baseline date; but were not in operation by the applicable minor source baseline date.

Exceptions: The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:

- Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- Actual emissions increases and decreases at any stationary source occurring after the baseline date.

“Begin Actual Construction” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

“Best Available Control Technology (BACT)” means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under CAA which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, takes into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for

control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 7 DE Admin. Code 1120 and 1121. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

“Building, Structure, Facility, or Installation” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively). For purposes of 2.0 of this regulation for VOC and NO_x pollutant-emitting activities, this definition shall apply only to the “Building, Structure or Facility”.

“Commence” as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“Complete” means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

“Condensable Particulate Matter” means material that is vapor phase at stack conditions, but condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack. Note that all condensable PM is assumed to be in the PM_{2.5} size fraction.

“Construction” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition or modification of an emissions unit) which would result in a change in actual emissions.

“Direct Particulate Matter” means particles that enter the atmosphere as a direct emission from a stack or an open source. Direct PM comprises two components: filterable PM and condensable PM. These two PM components have no upper particle size limit.

“Direct PM_{2.5}” means combined filterable PM_{2.5} and condensable PM with an aerodynamic diameter less than or equal to 2.5 micrometers. These solid particles are emitted directly from an air emissions source or activity, or are the gaseous emissions or liquid droplets from an air emissions source or activity that condense to form PM at ambient temperatures. Direct PM_{2.5} emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

“Emissions Unit” means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

“Enforceable” means any standard, requirement, limitation or condition established by an applicable federal or state regulation or specified in a permit issued or order entered thereunder, or contained in a SIP approved by the Administrator of the U.S. Environmental Protection Agency (EPA), and which can be enforced by the Department and the Administrator of the EPA.

“**Filterable PM**” means particles that are emitted directly by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train.

“**Fugitive Emissions**” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“**Fixed capital cost**” means the capital needed to provide all the depreciable components.

“**Greenhouse Gases (GHG)**” means an air pollutant composed of an aggregate group of six greenhouse gases; carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆). For the purposes of this regulation, the term CO₂equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed as follows;

- Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHG by the gases associated global warming potential as shown in Table 1-1 of this regulation. For the purposes of this computation, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).
- Sum the resultant value for each gas to compute a tpy CO₂e

(Break in Continuity Within Section)

02/11/2012

2.0 Emission Offset Provisions (EOP)

- 2.1 Applicability - The provisions of 2.0 of this regulation shall apply to any person responsible for any proposed new major stationary source or any proposed major modification.
- 2.2 For purposes of 2.0 of this regulation, "major stationary source" means:
- 2.2.1 Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act, except for either volatile organic compound or nitrogen oxides, or
- 2.2.2 Any stationary source of air pollutants which emits, or has the potential to emit, either volatile organic compounds, or nitrogen oxides, in the following amounts:
- 2.2.2.1 For areas in ozone attainment, ozone marginal, or ozone moderate nonattainment areas and located in the ozone transport region - 50 tons per year volatile organic compounds or 100 tons per year of oxides of nitrogen, or
- 2.2.2.2 For serious ozone nonattainment areas - 50 tons per year of either volatile organic compounds or oxides of nitrogen, or
- 2.2.2.3 For severe ozone nonattainment areas - 25 tons per year of either volatile organic compounds or oxides of nitrogen, or
- 2.2.2.4 For extreme ozone nonattainment areas - 10 tons per year of either volatile organic compounds or oxides of nitrogen.
- 2.2.3 Any physical change that would occur at a stationary source not qualifying under 2.2.1 or 2.2.2 of this regulation as a major stationary source, if the change would constitute a major stationary source by itself, or
- 2.2.4 A major stationary source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone, and "installation" means an identifiable piece of process, combustion or incineration equipment.
- 2.2.5 Nitrogen oxides and SO₂ shall be considered as precursors, and are considered nonattainment pollutants in any PM_{2.5} nonattainment area.

PROPOSED REGULATIONS

- 2.3 For the purposes of 2.4 and 2.5 of this regulation, emission units located in areas designated as attainment or marginal nonattainment areas that are located within the ozone transport region shall be considered located in a moderate ozone nonattainment area.
- 2.4 Conditions for Approval - No person subject to the provisions of 2.1 of this regulation shall install a major stationary source of volatile organic compounds or of nitrogen oxides, PM_{2.5}, or sulfur oxides or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone or PM_{2.5} within an area of non-attainment for that pollutant unless the following conditions are met:
- 2.4.1 The new major source or the major modification is controlled by the application of lowest achievable emission rate (LAER) control technology.
- 2.4.2 All existing sources in the State owned or controlled by the owner of the proposed new or modified source are in compliance with the applicable local, State and federal regulations or are in compliance with a consent order specifying a schedule and timetable for compliance.
- 2.4.3 The new or modified source must satisfy the following offset requirements:
- 2.4.3.1 The ratio of total actual emissions reductions of volatile organic compounds or nitrogen oxides to total allowable increased emissions of volatile organic compounds or nitrogen oxides shall be:
- 2.4.3.1.1 For moderate ozone nonattainment areas, 1.15 to 1, or
- 2.4.3.1.2 For serious ozone nonattainment areas, 1.2 to 1, or
- 2.4.3.1.3 For severe ozone nonattainment areas, 1.3 to 1, or
- 2.4.3.1.4 For extreme ozone nonattainment areas, 1.5 to 1.
- 2.4.3.2 All offsets shall be federally enforceable at the time of application to construct and shall be in effect by the time the new or modified source commences operation.
- 2.4.3.3 The ratio of total actual emissions reductions of sulfur dioxide, nitrogen oxides or PM_{2.5} to total allowable increased emissions shall be 1:1.
- 2.4.4 The application for construction permit pursuant to 7 DE Admin. Code 1102 shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.
- 2.4.5 Public participation for the construction permit shall be pursuant to 12.3 or 12.4 and 12.5 of 7 DE Admin. Code 1102.
- 2.5 Criteria for Emission Reductions Used as Offsets
- 2.5.1 All emission reductions claimed as offset credits shall be real, surplus, permanent, quantifiable, and federally enforceable;
- 2.5.2 The baseline for determining credit for emissions reductions shall be the lower of actual or allowable emissions. The offset credit shall only be allowed for emission reductions made below the baseline;
- 2.5.3 Emission reductions claimed as offsets shall have occurred on or after January 1, 1991;
- 2.5.4 Credit for an emission reduction may be claimed for use as an offset to the extent that the Department has not relied on it in issuing any permit under this regulation and has not relied on it for demonstration of attainment or reasonable further progress;
- 2.5.5 Emission reductions shall not be used as offsets in an area with a higher nonattainment classification than the one in which they were generated. For the purpose of 2.5.5, because the following states significantly contribute to non-attainment, or interfere with maintenance, of the ozone National Ambient Air Quality Standard in Delaware, the Department may consider any area in the following states as having the same nonattainment classification as the area of Delaware where the offsets are used: Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin.

- 2.5.6 Emission reductions claimed as offsets by a source must be generated from within the same nonattainment area or from any other area that contributes to a violation of the ozone National Ambient Air Quality Standard in the nonattainment area which the source is located which shall specifically include any area in the States of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.
- 2.5.7 The Department may allow the offset requirement in 2.5 of this regulation for direct PM_{2.5} emissions or precursors of PM_{2.5} (sulfur dioxide or NO_x) to be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of sulfur dioxide or NO_x using a ratio approved by the Department for the nonattainment area after public review and comment. Prior to making a final determination on the interpollutant trading ratios for a nonattainment area, the Department shall submit the interpollutant trading ratios and supporting information to the EPA for concurrence.
- 2.6 Emission reductions generated in a state other than Delaware and which are placed in the emissions bank established pursuant to 7 DE Admin. Code 1134 may be used as offsets provided they are federally enforceable and meet, at a minimum, all the provisions of 7 DE Admin. Code 1134 and 2.5.5, and 2.5.6 of this regulation.
- 16 DE Reg. 214 (08/01/12)**

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

1125 Requirements for Preconstruction Review

DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)

REGISTER NOTICE
#2012-09

1. TITLE OF THE REGULATIONS:
3300 Non Tidal Finfish

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

The proposed actions are intended to: formally define designated trout ponds; prohibit the harvest of trout in designated trout ponds prior to the scheduled pond trout season; authorize the taking of northern and blotched snakehead (invasive species) by bow and arrow and spear; and, make a number of minor editorial corrections to the non-tidal regulations.

Division regulations close fishing in stocked freshwater trout streams two weeks prior to the opening of trout season. This allows stocked trout to acclimate to their surroundings; become well dispersed; and, simplifies enforcement of the freshwater trout regulations. However, stocked trout ponds were not included in the definition of the trout streams and, therefore, similar closures to fishing prior to the opening of trout season cannot be adequately enforced. The Division has received numerous complaints from the angling public regarding stocked trout harvest prior to the season opening. The proposed amendments to §§3301 and 3304 seek to expressly define Newton and Tidbury Ponds as designated trout ponds, and establish closed and open seasons of same.

The Division is also proposing to amend §3303 to allow the take of northern and blotched snakehead by hook and line; bow and arrow and spear in non-tidal waters. These species are non-native invasives which have the potential to cause ecological harm. Bow fishing is an effective harvesting technique that may diminish their numbers and slow or prevent their spread. Similar language exists for carp.

Other proposed amendments are editorial in nature. These changes are intended to clarify awkwardly worded language (§3304 (4.0)) and make the non-tidal regulatory language consistent with the Delaware Administrative Code Drafting and Style Manual (September 2009 edition). They are not intended to change the meaning or intent.

