



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
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DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No. 2009-A-0028

**Re: APPROVAL OF FINAL REGULATION AMENDING 7 DE ADMIN.
CODE REGULATION 1101 (DEFINITIONS AND ADMINISTRATIVE
PRINCIPLES, SECTION 2.0 DEFINITIONS)**

Date of Issuance: August 14, 2009
Effective Date: September 10, 2009

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

Procedural History

On February 22, 2009, the Department's issued Start Action Notice #2009-03, which approved Division of Air and Waste Management, Air Quality Management Section's (AQMS) request to begin the formal regulatory development process to amend *7 DE Admin. Code Regulation 1101, Definitions and Administrative Principles*. AQMS prepared a proposed regulation to revise Section 2.0's definition of volatile organic compounds (VOCs). The Department had the proposed regulation published in the May 1, 2009 *Delaware Register of Regulations* and notice was published in newspapers of general circulation. The public notices also included a scheduled May 26, 2009 public hearing to be held in AQMS' office in Dover.

The Department received three comments in support of the proposed regulation within the public comment period that began May 1, 2009 and ended thirty day later, as

required by Delaware's *Administrative Procedures Act*, 29 Del. C. §10118(a). The Department held a public hearing before presiding Hearing Officer Robert P. Haynes. Department representatives, Gene Pettingill and Ron Amirikian, of AQMS attended the public hearing, but no member of the public attended. The Department's expert responsible for drafting the proposed regulation, Gene Pettingill, developed the administrative record to support the proposed regulation and the exhibits and the transcript of the hearing constitute the entire record as recommended by the presiding hearing officer. Mr. Haynes, based upon no public comments in opposition and the public hearing record, recommended no need to further develop the record, and he prepared a draft order and accompanying Report dated August 13, 2009 that recommends adoption of the proposed regulation as a final regulation without any change.

Findings

This Order considers a draft revision prepared by AQMS to reflect certain changes made by the United States Environmental Protection Agency (EPA) to the definition of VOCs. I find that the proposed regulation reflects EPA's determination that certain VOCs have negligible photochemical reactivity and has exempted them from federal regulation as ground-level ozone precursors. I find that this will impact Delaware users of certain products such as coatings, adhesives, cleaning compounds, aerosol propellants, and blowing agents from regulation as sources of air emissions of VOCs. Based upon the record developed, I find that the proposed regulation is reasonable and supported by maintaining consistency between the federal and state regulation of VOCs as defined by EPA in the Department's *Regulations*. The *Regulations* follow the regulatory scheme established by EPA. The federal definition of VOCs

changed and the proposed revision tracks the federal change so that Delaware's regulation of VOCs emissions will regulate the same substances as the federal regulation. Consequently, this Order approves the proposed regulation as a final regulation based upon the record and the information developed at the public hearing.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, hereby approves as reasonable the proposed regulation and the record in support of the proposed regulation, and adopts as a final regulation the proposed regulation published in the *May 1, 2009 Delaware Register of Regulations* and attached hereto as Appendix A; and

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

s/David S. Small
David S. Small,
Acting Secretary