



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

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Office of the  
Secretary

**Secretary's Order No. 2010-A-0014**

Re: APPROVAL OF FINAL REGULATION ADOPTING 7 DE ADMIN. CODE  
REGULATION 1150 (OUTER CONTINENTAL SHELF AIR  
REGULATIONS)

Date of Issuance: May 18, 2010

Effective Date: June 11, 2010

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 March 8, 2010, the Department's issued Start Action Notice 2010-10, which approved Division of Air and Waste Management, Air Quality Management Section's (AQM) request to begin the formal regulatory development process to establish a new regulation at 7 DE Admin. Code Regulation 1150 entitled "*Outer Continental Shelf Air Regulations.*" AQM prepared a proposed regulation, which incorporated by reference the United States Environmental Protection Agency's (EPA) regulations at 40 CFR Part 55. The Department published the proposed regulation in the April 1, 2010 *Delaware Register of Regulations* and in newspapers of general circulation. The public notices also provided notice of an April 21, 2010 public hearing to be held in the AQM's office in Dover.

The Department did not receive any written public comment on the proposed regulation within the thirty day public comment period that began on April 1, 2010. No member of the public attended the April 21, 2010 public hearing held before presiding Hearing Officer Robert P. Haynes. Department representatives, Mark Prettyman and Ron Amirikian, of AQM attended the public hearing, and developed the record to support the proposed regulation. Mr. Haynes, in a Report dated May 5, 2010 and attached hereto, recommended that the Department adopt the proposed regulation as a final regulation with one small non substantive correction based upon the extensive record AQM developed to support the proposed regulation.

### **Findings**

I find that the record supports approval of the proposed regulation, as corrected, as a final regulation in order to allow the Department to exercise its delegated jurisdiction to regulate and reduce harmful air pollution emissions from any source located within the Outer Continental Shelf (OCS), which is an area 25 miles beyond Delaware's seaward boundary. The proposed regulation incorporates the EPA regulation by reference and will allow Delaware to issue any air pollution control permits, as to requiring applicants to seek a permit from EPA. Any air pollution control permit issued to an OCS source of air pollution would apply Delaware air pollution control regulations. I find that the proposed regulation is well supported in the record and adopt the reasoning in the Report and its recommendations, which includes adopting the proposed regulation, as corrected for a minor non-substantive change, as a final regulation.

Consequently, this Order approves the proposed regulation, as set forth in Appendix A to the Report, 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 adopts the findings, reasons and conclusions in the Report, and hereby approves the issuance of a final regulation *7 DE Admin. Code 1150* as set forth in Appendix A to the Report, to be included as part of Delaware *Regulations Governing the Control of Air Pollution* based upon the record developed below; 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/Collin P. O'Mara*  
Collin P. O'Mara  
Secretary

## HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara  
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire  
Senior Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

RE: Proposed Regulation, 7 DE Admin. Code 1150, "Outer Continental Shelf Air Regulations" in Delaware Regulations Governing Control of Air Pollution

DATE: May 5, 2010

### I. BACKGROUND AND PROCEDURAL HISTORY

This report considers a proposed regulation entitled "Outer Continental Shelf Air Regulations," which is proposed to be added to the Department of Natural Resources and Environmental Control's (Department) *Regulations Governing Control of Air Pollution*.

Secretary O'Mara signed Start Action Notice ("SAN") 2010-10 on March 8, 2010 to begin the formal regulatory development process and the SAN indicated that the proposed regulation would allow Delaware to regulate air emissions pursuant to the United States Environmental Protection Agency's regulations codified at 40 CFR Part 55, which were issued under Section 328(a) (1) of the federal Clean Air Act. The EPA's regulations apply to all sources of air emissions from within the Outer Continental Shelf (OCS), which for Delaware is within 25 miles of Delaware's boundaries along the Atlantic Ocean.

The Department's experts in the Division of Air and Waste Management, Air Quality Management Section (AQM) developed the proposed regulation, which was published in the April 1, 2010 issue of the *Delaware Register of Regulations*. The proposed regulation incorporated by reference the applicable federal regulations at 40 CFR Part 55. On April 21, 2010, the Department held a public hearing in Dover, at which time no member of the public attended. I presided over the hearing, which was attended by the Department's representatives from AQM, Mark A. Prettyman and Ronald Amirikian, who developed the record to support the

proposed regulation. The public comment period for written public comments closed on April 30, 2010, and the Department did not receive any written public comments. Mr. Prettyman indicated one minor non-substantive change to the proposed regulation was necessary to correct a number reference.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD**

The public hearing record contains a verbatim transcript of the April 21, 2010, public hearing, and documents, marked as Exhibits (Ex). The Department's expert, Mark Prettyman, introduced for the record hearing exhibits identified as Ex. Nos. 1-18, which are described in Ex 18 attached hereto. The documents set forth the regulatory basis for the proposed regulation, which will extend the Department's air pollution control regulations to regulated sources of air pollutants within the OCS in a manner consistent with the federal regulatory program. Indeed, the proposed regulation incorporates by reference the federal regulations set forth at 40 CFR Part 55, as set forth in Exhibit 8.

## **III. DISCUSSION AND REASONS**

I find that the proposed regulation is supported by the record and will allow the Department to exercise EPA's delegated air regulatory authority in 40 CFR Part 55 in order to protect the environment and the public health within Delaware from harmful air emissions that may occur from any regulated sources within the OCS. The OCS is anticipated to have certain construction activity associated with the possible location of wind energy facilities, including the construction of certain preliminary facilities in the near future. The record reflects this future activity in the United States Department of Interior's lease with Bluewater Wind Delaware, L.L.C. The Department's experts also prepared an analysis under the Regulatory Flexibility Act and found no support for finding that businesses subject to the analysis would be adversely impacted by the proposed regulation. I agree with this analysis.

The practical effect of the proposed regulation is to regulate an OCS source of regulated air emission in the same manner as if the source was located on Delaware's land area. The Department's exercise of this regulation is contemplated by the EPA regulation. The end result is that the proposed regulation, if adopted, will allow Delaware to issue any permits for any source to be regulated under 40 CFR Part 55. Delaware's regulation of OCS sources of air pollution is necessary in order that Delaware may control air emissions in order to meet the National Ambient Air Quality Standards (NAAQS). These standards impose emission limits for six pollutants, carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide, that EPA and Delaware regulators have determined are particularly harmful air emissions for the environment and public health. Thus, the proposed regulations will extend the Department's control over air emissions to sources located in the OCS, and thereby effectively regulate and reduce the emissions of harmful air pollutants consistent with state and federal laws and regulations.

#### **IV. RECOMMENDED FINDINGS AND CONCLUSIONS**

Based on the record developed, I find and conclude that the record supports approval of the proposed regulation, as set forth in Appendix A hereto, as a final regulation. In conclusion, I recommend the Secretary adopt the following findings and conclusions:

- 1.) The Department has jurisdiction under its statutory authority 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 and provided an appropriate analysis under the Regulatory Flexibility Act that supports adoption of the proposed regulation as a final regulation;

5.) The Department's proposed regulation incorporates by reference the EPA regulations at 40 CFR Part 55 to allow Delaware to regulate air emissions of harmful pollutants from sources located within the OCS. Any source of harmful pollutants on the OCS will be regulated in the same manner as if they were located on Delaware's land area. The proposed regulation establishes reasonable procedures to review permit applications for regulated air emission sources that would be located within the OCS. The regulation of harmful air pollution sources within the OCS will allow Delaware to satisfy the federal and state air quality attainment goals, as established by the National Ambient Air Quality Standards. Consequently, the proposed regulation should be approved as a final regulation, and be allowed to go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*; and that

6.) The Department shall submit the proposed regulation as final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by this Order, as determined by the Department, but which will include service on participants in the Department's regulatory development and public hearing process.

*s/Robert P. Haynes*  
Robert P. Haynes, Esquire  
Senior Hearing Officer

**Regulation No. 1150, “Outer Continental Shelf Air Regulations,”**  
**Public Hearing Evidence List**

1. Information on National Ambient Air Quality Standards (NAAQS) for Ground-Level Ozone and Particulate Matter (<http://www.epa.gov/air/criteria.html>, <http://www.epa.gov/air/ozonepollution/standards.html>, and <http://www.epa.gov/air/particlepollution/standards.html>)
2. Information on Delaware’s 8-Hour Ozone Designation and Attainment Date (<http://www.epa.gov/ozonedesignations/1997standards/regions/region3desig.htm>) and Fine Particulate Matter Designation (<http://www.epa.gov/pmdesignations/2006standards/final/region3.htm>)
3. Environmental Protection Agency “Ozone and Your Health” (EPA-456/F-09-001, February 2009) <http://www.epa.gov/airnow/ozone-c.pdf>
4. Environmental Protection Agency “Particle Pollution and Your Health” (EPA-452/F-03-001, September 2003) <http://www.epa.gov/airnow/particle/pm-color.pdf>
5. Environmental Protection Agency “Heart Disease, Stroke, and Outdoor Air Pollution” (EPA-452/F-10-001, January 2010) [http://www.epa.gov/airnow/heart\\_flyer-1-28-10-final.pdf](http://www.epa.gov/airnow/heart_flyer-1-28-10-final.pdf)
6. State of the Air 2009, American Lung Association <http://www.lungusa2.org/sota/2009/SOTA-2009-Full-Print.pdf>
7. US CODE Title 42, §7627. Air pollution from Outer Continental Shelf activities. (printed on 1/14/2010 from [http://www.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00007627----000-.html](http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00007627----000-.html))
8. 40 CFR 55, “Outer Continental Shelf Air Regulations” (July 1, 2009 ed.), [http://www.access.gpo.gov/nara/cfr/waisidx\\_09/40cfr55\\_09.html](http://www.access.gpo.gov/nara/cfr/waisidx_09/40cfr55_09.html)
9. U.S. Department of the Interior, Mineral Management Service, Official Protraction Diagram for “Salisbury NJ 18-05” (July 1996, [http://www.mms.gov/ld/Offshore\\_Cadastre/Atlantic/pdf/NJ18-05-02-JUL-1996.pdf](http://www.mms.gov/ld/Offshore_Cadastre/Atlantic/pdf/NJ18-05-02-JUL-1996.pdf)) showing Outer Continental Shelf Block information for Block 6325, proposed location by Bluewater Wind Delaware LLC to conduct alternative energy data collection activities
10. U.S. Department of the Interior, Mineral Management Service, Interim Policy Lease “OCS-A 0474 – Bluewater Wind Delaware LLC” (November 1, 2009, <http://www.mms.gov/offshore/RenewableEnergy/PDFs/OCSAIPLeaseBluewaterWind>)

[DE.pdf](#)), lease of submerged lands to Bluewater Wind Delaware LLC for alternative energy activities on the outer continental shelf

11. Start Action Notice #2010-10
12. Regulatory Flexibility Act Compliance Form: Proposed Adoption of 7 DE Admin Code 1150, Outer Continental Shelf Air Regulations
13. The affidavit and the legal notice as it appeared in the Delaware State News on March 21, 2010, advertising that a public hearing would be held on the proposed adoption of Regulation No. 1150 on April 21, 2010 in Dover
14. The affidavit and the legal notice as it appeared in the Sunday News-Journal on March 21, 2010, advertising the April 21, 2010 public hearing
15. The legal notice which was mailed to persons on Air Quality Management's mailing list, notifying the recipient of the April 21, 2010 public hearing
16. The register notice for Regulation No. 1150 as it appeared on page 1284 of the Delaware Register of Regulations on April 1, 2010, advertising the April 21, 2010 public hearing
17. The proposed Regulation No. 1150, "Continental Shelf Air Regulations," as it appeared on pages 1284-1285 of the Delaware Register of Regulations on April 1, 2010
18. Regulation No. 1150, "Outer Continental Shelf Air Regulations," Public Hearing Evidence List, prepared by Mark A. Prettyman, AQM Environmental Scientist