



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

OFFICE OF THE  
SECRETARY

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**Secretary's Order No.: 2013-A-0036**

**RE: Approving Final Revision to Delaware's State Implementation Plan (SIP),  
to wit: *Regional Haze 5-Year Periodic Report Progress Toward the Reasonable  
Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy  
of Existing Implementation Plan***

**Date of Issuance: September 24, 2013**

**Effective Date of the Amendment: September 24, 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 the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the *Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan*. Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area.

*Delaware's Good Nature depends on you!*

These emissions are transported over large regions, including national parks, forests and wilderness areas (“Class I” federal areas).

The Federal Clean Air Act (“FCAA”) mandates protection of visibility, especially in Class I areas. In 1999, and in various revisions that extend through 2006, the U.S. Environmental Protection Agency (“EPA”) finalized the Regional Haze Rule (“RHR”). Under this rule, states are required to develop a series of SIPs every 10 years to reduce visibility impairment, with the express intent that, by 2062, visibility in all Class I areas will be returned to natural conditions. The first such SIP must establish interim goals and emissions reduction strategies for 2018.

On September 25, 2008, the Department’s Division of Air Quality (“DAQ”) submitted to EPA the *Delaware Visibility State Implementation Plan* (the “2008 SIP”), which was Delaware’s first SIP demonstrating how Delaware met its 2018 visibility goals and emission reduction strategies. The 2008 SIP included (1) long-term strategies; (2) how Delaware met its fair share of the “reasonable progress goals” toward reducing visibility impairment in Class I areas; and (3) Best Available Retrofit Technology. EPA approved Delaware’s SIP on July 19, 2011 (effective on August 18, 2011).

The aforementioned *5-Year Progress Report* is a proposed SIP revision which fulfills the requirements of the Regional Haze Rule (“RHR”) at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i). It is a report on Delaware’s progress in improving visibility five years after Delaware’s initial SIP submission to the EPA in 2008, and is due to the EPA by September 25, 2013.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the August 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 22, 2013. It should be noted that no members of the public attended the aforementioned hearing held by the Department, nor were any negative comments received in this matter. Proper notice of the hearing was provided as required by law.

The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 12, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the aforementioned *Regional Haze 5-Year Periodic Report*, as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed revision to Delaware's aforementioned SIP is 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 SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the aforementioned ***Regional Haze 5-Year Periodic Report***. With the adoption of this Order, Delaware will be enabled to fulfill the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i), and will report its progress in improving visibility five years subsequent to Delaware's initial SIP submission to EPA in 2008.

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 SIP revision as final;

2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on August 22, 2013;

3.) The Department held a public hearing on August 22, 2013, 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 SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;

5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the ***Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan***, should be adopted as final, thereby enabling Delaware to (1) fulfill the requirements of the Regional Haze Rule ("RHR") at

40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i); (2) report its progress in improving visibility five years subsequent to Delaware's initial SIP submission to EPA in 2008; and (3) because the revision is well supported by documents in the record;

6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the *Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan* 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 *LAV*  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** Proposed Revision to the Delaware State Implementation Plan (SIP):  
*Regional Haze 5-Year Periodic Report Progress Toward the Reasonable  
Progress Goals for Visibility in Class I Federal Areas and  
Determination of Adequacy of Existing Implementation Plan*

**DATE:** September 12, 2013

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### **I. Background:**

A public hearing was held on Thursday, August 22, 2013, 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 revisions to the Delaware State Implementation Plan (SIP), to wit: the *Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan*. Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area. These emissions are transported over large regions, including national parks, forests and wilderness areas ("Class I" federal areas).

The Federal Clean Air Act ("FCAA") mandates protection of visibility, especially in Class I areas. In 1999, and in various revisions that extend through 2006, the U.S. Environmental Protection Agency ("EPA") finalized the Regional Haze Rule ("RHR").

Under this rule, states are required to develop a series of SIPs every 10 years to reduce visibility impairment, with the express intent that, by 2062, visibility in all Class I areas will be returned to natural conditions. The first such SIP must establish interim goals and emissions reduction strategies for 2018.

On September 25, 2008 (and later approved by EPA in August, 2011) the Department's Division of Air Quality ("DAQ") submitted to EPA the *Delaware Visibility State Implementation Plan* (the "2008 SIP"), which was Delaware's first SIP demonstrating how Delaware met its 2018 visibility goals and emission reduction strategies. The 2008 SIP included (1) long-term strategies; (2) how Delaware met its fair share of the "reasonable progress goals" toward reducing visibility impairment in Class I areas; and (3) Best Available Retrofit Technology. EPA approved Delaware's SIP on July 19, 2011.

The aforementioned *5-Year Progress Report* is a proposed SIP revision which fulfills the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i). It is a report on Delaware's progress in proving visibility five years after Delaware's initial SIP submission to the EPA in 2008, and is due to the EPA by September 25, 2013.

The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the August 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 22, 2013. It should be noted that no members of the public attended the aforementioned hearing held by the Department, nor were any negative comments received in 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 August 22, 2013, the Department's Division of Air Quality ("DAQ") offered its eight (8) exhibits pertaining to this proposed SIP revision, 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 holding of the aforementioned public hearing, a copy of the Register Notice as it appeared in Delaware's *Register of Regulations* on August 1, 2013, copies of the positive comments from both the U.S. Department of Interior and the U.S. Department of Agriculture, and a copy of Delaware's proposed State Implementation Plan (SIP), to wit: the ***Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan.*** Again, no member of the public attended the aforementioned hearing held by the Department on August 22, 2013, nor was any negative comment received by the Department with regard to this proposed SIP revision.

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, a copy of the above-referenced proposed revision to Delaware's State Implementation Plan (SIP) with regard to the ***Regional Haze***

*5-Year Periodic Report* is 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 these proposed revisions. 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 Delaware’s proposed State Implementation Plan. Accordingly, I recommend promulgation of the same 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 the aforementioned 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 revisions to Delaware's SIP, to wit: the *Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan*, will enable Delaware to fulfill the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i), and will report Delaware's progress in improving visibility five years subsequent to Delaware's initial SIP submission to EPA in 2008;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed revisions to Delaware's aforementioned SIP, as published in the August 1, 2013 *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 revisions 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