



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

OFFICE OF THE  
SECRETARY

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DOVER, DELAWARE 19901

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**Secretary's Order No.: 2013-A-0039**

**RE:            Approving Final Regulations to 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*) (pursuant to E.O. 36 DNREC Regulatory Review)**

**Date of Issuance:    October 14, 2013**

**Effective Date of the Amendment:    November 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 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older

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regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, three sections of Delaware's existing air regulations were identified as needing revision at this time:

(1) **7 DE Admin. Code 1101, Definitions and Administrative Principles:**

In 2008, Delaware's air regulations were recoded and established in 7 DE Admin. Code 1100. The regulatory language in 1101 was inadvertently not updated, and continues to reference the prior "Regulations Governing the Control of Air Pollution". The outdated references could lead citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. Thus, revisions to this existing air regulation are being proposed to correct the outdated references.

(2) **7 DE Admin. Code 1104, Particulate Emissions from Fuel Burning Equipment:**

Revisions are being proposed by the Department to this existing air regulation to clarify that the exemptions found in Sections 1.2 and 1.4 of this regulation are for the capacity of the unit, and not the operating rate. The revised regulation will, once promulgated, be submitted to the U.S. Environmental Protection Agency ("EPA") as a revision to Delaware's State Implementation Plan ("SIP").

(3) **7 DE Admin. Code 1114, Visible Emissions:**

Revisions are being proposed by the Department to this existing air regulation to delete the alternate opacity standard in Section 2.3. This alternate standard was established for a petroleum refinery unit prior to the installation of modern pollution control equipment in 2006. The installation of the pre-scrubber on the catalytic cracking unit in 2006 makes this alternate opacity standard obsolete, and the unit is now subject to compliance with the general 20 percent opacity limit in Section 2.1. This is a burdensome requirement to administer and track, and is no longer either relevant or necessary. The revised regulation will, once promulgated, be submitted to the EPA as a revision to Delaware's State Implementation Plan ("SIP").

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notices 2013-13(E.O.36), 2013-15(E.O.36), and 2013-16(E.O.36), respectively. The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 1, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 1, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 28, 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. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. The adoption of this Order will enable Delaware to update its existing, older air regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to 7 DE Admin. Code 1104 and 7 DE Admin. Code 1114 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan

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 initial proposed Amendments, including at the public hearing held on August 1, 2013;

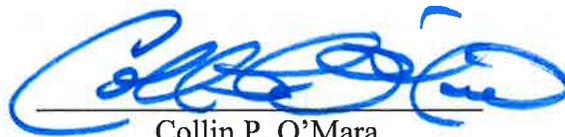
3.) The Department held a public hearing on August 1, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will enable Delaware to update its existing, older regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to 7 DE Admin. Code 1104 and 7 DE Admin. Code 1114 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) update its existing, older air regulations (as well as its SIP), and provide additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

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.



Collin P. O'Mara  
Secretary

## HEARING OFFICER'S REPORT

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

**FROM:** Lisa A. Vest <sup>lmv</sup>  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** **Proposed Regulation Amendments to Multiple Existing Air Regulations:**  
**7 DE Admin. Code 1101 (*Definitions and Administrative Principles*);**  
**7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning***  
***Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*)**  
**(pursuant to E.O. 36 DNREC Regulatory Review)**

**DATE:** September 28, 2013

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Thursday, August 1, 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 amendments (“amendments”) to multiple existing air regulations, to wit: 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*). This public hearing was held as a result of the Department’s review of its existing regulations, pursuant to Governor Markell’s Executive Order No. 36 (hereinafter referred to as “E.O. 36”). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state’s commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, three sections of Delaware's existing air regulations were identified as needing revision at this time:

(1) **7 DE Admin. Code 1101, Definitions and Administrative Principles:**

In 2008, Delaware's air regulations were recoded and established in 7 DE Admin. Code 1100. The regulatory language in 1101 was inadvertently not updated, and continues to reference the prior "Regulations Governing the Control of Air Pollution". The outdated references could lead citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. Thus, revisions to this existing air regulation are being proposed to correct the outdated references.

(2) **7 DE Admin. Code 1104, Particulate Emissions from Fuel Burning Equipment:**

Revisions are being proposed by the Department to this existing air regulation to clarify that the exemptions found in Sections 1.2 and 1.4 of this regulation are for the capacity of the unit, and not the operating rate. The revised regulation will, once promulgated, be submitted to the U.S. Environmental Protection Agency ("EPA") as a revision to Delaware's State Implementation Plan ("SIP").

(3) **7 DE Admin. Code 1114, Visible Emissions:**

Revisions are being proposed by the Department to this existing air regulation to delete the alternate opacity standard in Section 2.3. This alternate standard was established for a petroleum refinery unit prior to the installation of modern pollution control equipment in 2006. The installation of the pre-scrubber on the catalytic cracking unit in 2006 makes this alternate opacity standard obsolete, and the unit is now subject to compliance with the general 20 percent

opacity limit in Section 2.1. This is a burdensome requirement to administer and track, and is no longer either relevant or necessary. The revised regulation will, once promulgated, be submitted to the EPA as a revision to Delaware's State Implementation Plan ("SIP").

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*), pursuant to 7 *Del. C.*, Chapter 60. The Department's Division of Air Quality commenced the regulatory development process with Start Action Notices 2013-13(E.O.36), 2013-15(E.O.36), and 2013-16(E.O.36), respectively. The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held the public hearing on August 1, 2013. It should be noted that no public comment was received by the Department at any time during the course of this promulgation. Proper notice of the hearing was provided as required by law.

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

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) five documents introduced at the public hearing held on August 1, 2013, and marked by this Hearing Officer accordingly as Department Exhibits 1-5. The Department's person primarily responsible for the drafting and overall promulgation of these proposed amendments, Ron Amirikian, developed the record with the relevant documents in the Department's files.

Following the submission of the Department's exhibits into the record at the hearing held on August 1, 2013, Mr. Amirikian proceeded to offer a brief summary as to the Department's proposed actions for the benefit of the record developed in this matter (see Section I of this

Report for said summary). As noted previously, no public comment was received by the Department at any time during the course of 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 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. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*), as noted above. Accordingly, I recommend promulgation of each of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

3. The Department provided adequate public notice of all proceedings in a manner required by the law and regulations;
4. The Department held its public hearing in a manner required by the law and regulations;
5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*) will enable Delaware to update these existing, older air regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to 7 DE Admin. Code 1104 and 7 DE Admin. Code 1114 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan;
6. Additionally, promulgation of this proposed regulatory action by the Department will further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: to strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance;
7. The Department has reviewed these proposed regulatory 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;

8. The Department's aforementioned proposed regulatory amendments to 7 DE Admin. Code 1101 (*Definitions and Administrative Principles*); 7 DE Admin. Code 1104 (*Particulate Emissions from Fuel Burning Equipment*); and 7 DE Admin. Code 1114 (*Visible Emissions*), as published in the July 1, 2013 *Delaware Register of Regulations* and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
9. The Department shall submit the proposed regulation amendments as final amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulations require, and as the Department determines is appropriate.



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LISA A. VEST  
Public Hearing Officer

## **APPENDIX “A”**



**Title 7 Natural Resources and Environmental Control  
1100 Air Quality Management Section**

**1101 Definitions and Administrative Principles**

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02/01/1981 *insert effective date of revision*

- 3.4 If any part of 7 DE Admin. Code 1100~~these regulations~~, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of 7 DE Admin. Code 1100 ~~these Regulations~~ shall not be affected thereby and shall be deemed valid and effective.

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**Title 7 Natural Resources and Environmental Control  
1100 Air Quality Management Section**

**1104 Particulate Emissions from Fuel Burning Equipment**

02/01/1981 insert effective date of revision

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1.2 The provisions of this Regulation shall not apply where the heat input capacity of  
~~to~~ the equipment is less than 1,000,000 BTU per hour.

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1.4 For purposes of this Regulation, the heat input value shall be based upon the  
manufacturer's guaranteed maximum input or the Department's calculated input  
capacity.

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## Title 7 Natural Resources and Environmental Control

### 1100 Air Quality Management Section

#### 1114 Visible Emissions

~~07/17/1984~~ insert effective date of revision

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~~2.3—The requirements of 2.1 of this regulation shall not apply to any existing Catalytic Cracking Unit. No person shall cause or allow the emission of visible air contaminants or smoke from any existing Catalytic Cracking Unit, the shade or appearance of which is greater than 50% opacity.~~

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