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.: 2013-A-0055

RE: Approving Final Amendments to 7 DE Admin. Code 1140:
Delaware Low Emission Vehicle Program

Date of Issuance: November 15, 2013

Effective Date of the Amendment: December 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. These amendments to the Delaware Low Emission Vehicle Program will allow Delaware to efficiently reduce the impacts of toxic air pollution from our fleet of vehicles, while continuing to make progress toward the federal attainment of the national ambient air quality standards.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle Program.* The primary purpose of this promulgation is to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that

comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

The Clean Air Act ("CAA") establishes the framework for controlling mobile source emissions. Section 208 of the CAA allows California to regulate tailpipe emissions from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of California Low Emission Vehicle II (LEV II) requirements. California has revised its LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, to wit: (1) adopt the LEV III requirements; or (2) revert to the federal program. This proposed action seeks to adopt the LEV III standards by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on December 31, 2012.

Contrary to concerns voiced by various members of the public during the course of this promulgation, the aforementioned adoption method does not "lock" Delaware to future changes adopted by California. If California makes any changes to its requirements, they will have no effect in Delaware because Delaware's proposal incorporates the California requirements as they exist on December 31, 2012. Each time that California makes a change to its requirements, Delaware will, in turn, evaluate that change, and propose to either adopt the new California requirement or revert to the federal program. Either way, a regulatory revision will be necessary, subject to all of the provisions of 7 *Del.C.* Chapter 60 and 29 *Del.C.* Chapter 101.

Additional concern was raised by the public with regard to the burden placed on taxpayers should this proposed action be promulgated by the Department. Specific

comments opined that to blame Delaware's pollution on auto emissions was not logical, and that the secondary cost to Delaware taxpayers would be obscene. In response to such comment, the Department seeks to adopt this regulation because Delaware has poor air quality, and auto emissions are a significant source of air pollutants in Delaware. The most recent emission inventory data for Delaware shows vehicle emissions have become the largest source of pollution in the state. Mobile sources in the on-road and off-road categories account for 91% carbon monoxide (CO) emissions, 64% in NO_x emissions, and 56% in VOC emissions, respectively. Further, the transportation sector is one of the largest contributors of greenhouse gases in Delaware, producing close to 29% of all such emissions.

As noted above, Delaware adopted the LEV II requirements in December 2010. California has since adopted LEV III requirements, and Delaware now has the option of either adopting the LEV III requirements or reverting to the federal program. Because mobile sources are becoming the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because LEV III requirements are reasonable and have greater emission benefit than the current federal program, the Department's Division of Air Quality recommends the adoption of LEV requirements. Thus, I believe the adoption of LEV III requirements is a reasonable and highly cost-effective means to reduce auto emissions.

With regard to other comments suggesting that the adoption of the LEV III will result in Delawareans traveling to other states (such as New Jersey) to purchase their cars because they will be less expensive (due to lesser pollution rules), it should be noted that the LEV III requirements have already been adopted in surrounding states, including

New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, 10 other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut and Arizona. Vehicles purchased in any of these states must be certified to the LEV III emission standards.

Responding again to the numerous comments received by the Department regarding the projected increased costs for a new vehicle in 2025, the Department has set forth the economics associated with the proposed revision to adopt the LEV III requirements. The estimated cost of LEV III was presented at the public hearing as $1,900.00 per vehicle price increase in 2025, due to technology upgrades. These increased costs will be further offset and result in a much greater savings from the improved fuel economy, resulting in a 3:1 savings over the projected increase. This estimated cost/savings was taken directly from work done by California when they adopted the LEV III requirements. LEV III is comprised of three main components: (1) a Greenhouse Gas ("GHG") component; (2) an exhaust/evaporative component; and (3) a Zero Emission Vehicle (ZEV) component. The Department proposal is to adopt the GHG and tailpipe/evaporative components, but not the ZEV component. Given the cost concerns raised in public comments, the Department has reviewed the California work again, and found that the aforementioned $1,900.00 cost (actually, $1,840.00 which the Department rounded up) included the ZEV component, which the Department is *not* proposing to adopt. Without the ZEV component, California estimated the cost of the LEV III program to be $170.00 per light-duty passenger vehicle in 2017, up to a maximum of $1,360.00 for light duty trucks in 2025; however, this calculation does not

include the anticipated fuel savings which are projected to be significantly greater than any limited price impact.

It should also be noted that Delaware consumers will likely see this increase in cost in the near future in Delaware, regardless of whether LEV III requirements are adopted in Delaware. Because our neighboring states - Maryland, Pennsylvania and New Jersey - have all adopted LEV III, residents of these states can only purchase vehicles that meet LEV III standards. Should Delaware choose to not adopt LEV III, and the Delaware dealers inventoried non-LEV III vehicles, they could not sell them to residents of these border states. Because of this, Delaware dealers will more than likely inventory only LEV III cars, regardless of whether Delaware adopts LEV III. Furthermore, since all border states have adopted LEV III, only cars that meet LEV III standards may be sold in these states, so the Delaware adoption of LEV III will have no impact on cost to Delaware residents that purchase vehicles from surrounding states' dealerships. The Department notes that, from a practical standpoint, there will be no cost difference to Delaware citizens as a result of this action. Thus, because adjacent states have adopted this standard, Delawareans will be purchasing these vehicles regardless, whether in Delaware or in adjacent states, and adopting the LEV III standard ensures that residents also receive the extended warranty and other benefits.

If, however, the Department chooses not to adopt LEV III requirements, Delaware citizens would be placed at a disadvantage relative to surrounding states, due to the fact that any car sold to a resident of a state that has adopted LEV III receives an extended 15 year, 150,000 mile warranty. Any car sold to a resident of a state that has not adopted LEV III, however, gets the standard 10 year, 120,000 mile warranty. The car is the same

car, however, the warranty period is based upon the status of the resident's home state only. Delaware's adoption of LEV III benefits Delaware citizens by providing them with a better warranty, at no additional cost.

With regard to comments received by the Department concerning how increased repair costs were factored into the economic analysis, and the correlating impact of the increased warranty period on the final price of a vehicle, the Department notes that this comment asserts that LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost. The Department's Division of Air Quality maintains that the cost of any new technology needed to meet LEV III requirements is clearly factored into the California and EPA cost analysis, and the Department believes that the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier 3 Vehicle Emissions and Fuel Standards (March 2013) proposal that,

> "*...the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon absorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible.*"

With respect to other concerns voiced at the time of the public hearing on September 23, 2013, one commenter stated that the adoption of these proposed amendments was viewed as a reversal of the Secretary's decision to adopt the LEV II standards. At that time, the Department did not include the dates by which California had adopted the standards. One of the purposes of this action is to correct this error by removing the provisions of existing 7 DE Admin. Code 1140 that provide for the prospective incorporation by reference of future revisions made by California and require that future changes be considered through a Delaware regulatory process.

Additional comments were received by the Department in this matter which argued whether global warming is occurring and questioned the need to reduce $PM_{2.5}$ and GHG emissions, as well as the health impacts of $PM_{2.5}$. The Department agrees with the overwhelming global scientific consensus that the increased atmospheric concentration of GHG emissions has intensified the greenhouse effect and is contributing to climate impacts ranging from greater temperature and precipitation variability, more extreme weather events, and sea level rise. These climate impacts threaten Delaware's economy, public health, air and water resources, infrastructure, and coastal resources, and can increase energy demand. Reducing emissions globally can help mitigate these impacts in the decades ahead. Further, the science is overwhelming that $PM_{2.5}$ concentrations are a significant contributor to numerous respiratory related illnesses and particularly impact at-risk populations.

It should be noted that, in addition to the concerns noted within the public comment received by the Department as detailed above, numerous comment was also received which support the adoption of cleaner vehicle standards. Such comment

indicated support for Delaware's adopting of the Low Emission Vehicle Program, and encouraged the Department to move forward expeditiously to finalize the adoption of the proposed amendments to 7 DE Admin. Code 1140.

Lastly, with regard to a few clerical errors caught subsequent to the initial proposed amendments to 7 DE Admin. Code 1140 being published in the *Delaware Register of Regulations*, the Department seeks to correct the same with minor, non-substantive revisions, so that the final amendments to 7 DE Admin. Code 1140 will be correct upon promulgation.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-01. The Department published the initial proposed regulatory amendments in the September 1, 2013 *Delaware Register of Regulations* and held a public hearing on September 23, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 15, 2013 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments. With regard to the public comment that was received by the Department, both at the time of the hearing and subsequent to the hearing held on September 23, 2013, I find that the Department's experts were responsive to the questions and concerns raised

by the public, and provided thorough, rational responses and reasoned conclusions with respect to the same.

Furthermore, I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of the *revised* regulatory amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle Program*, Delaware will be able to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

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 *revised* 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 a public hearing;

3.) The Department held a public hearing on the proposed Amendments on September 25, 2013;

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

5.) The recommended *revised* Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the September 1, 2013, *Delaware Register of Regulations*;

6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle III (LEV III) standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025; and

7.) Adopting these amendments will allow Delaware to receive omission reduction credits that it would otherwise not receive if it were not to adopt these measures, and Delaware residents purchase vehicles equipped with LEV III technology either in Delaware or from surrounding states;

8.) The Department shall submit this Order approving the final regulation Amendments 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

Ahear\ Reg 1140 Amendmts LEV III 2013.ORD

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 1140:
Delaware Low Emission Vehicle Program

DATE: November 15, 2013

I. Background:

A public hearing was held on Monday, September 23, 2013, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware, to receive public comment on the Department's proposal to amend 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle Program*. These amendments to the Delaware Low Emission Vehicle Program will allow Delaware to efficiently reduce the impacts of toxic air pollution from our fleet of vehicles, while continuing to make progress toward the federal attainment of the national ambient air quality standards.

The primary purpose of this promulgation is to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle (LEV) III standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025.

The Clean Air Act ("CAA") establishes the framework for controlling mobile source emissions. Section 208 of the CAA allows California to regulate tailpipe emissions from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of California LEV II requirements. California has revised its LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, to wit: (1) adopt the California LEV III requirements; or (2) revert to the federal program. This proposed action seeks to adopt the California LEV III standards by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on December 31, 2012.

The proposed promulgation was published in the September 1, 2013 edition of the *Delaware Register of Regulations*, and the public hearing regarding this proposed regulation was held, as previously noted above, on September 23, 2013. Various members of the public attended the public hearing, and comment was received by the Department with regard to this proposed promulgation, which will be addressed in detail below. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on September 23, 2013, Deanna Cuccinello of the Department's Division of Air Quality offered the Department's twenty-nine (29) exhibits pertaining to this proposed regulation, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits was a copy of the Start Action Notice for this promulgation (SAN No. 2013-01), documentation regarding the holding of the public workshop held by the Department

concerning this proposed action, a copy of the legal notice of the Department's holding of this public hearing on September 23, 2013, a copy of the California Code of Regulations, Title 13, "Motor Vehicles", applicable dated sections, incorporated by reference, copies of related technical support data upon which the Department relied in the drafting of this proposed amendment, and copies of the actual proposed amendments to Delaware's existing 7 DE Admin. Code 1140.

At the time of the aforementioned public hearing, Ms. Cuccinello provided a brief summary of the proposed amendments to 7 DE Admin. Code 1140 which the Department is seeking to enact at this time (*see* Section I). Following the Department's presentation, the floor was open for those in attendance to offer public comment for the formal record generated in this matter.

The public hearing on September 23, 2013 was well attending by members of the public, many of whom had questions and/or comments offered for the record with regard to this proposed action. Following the hearing, the record remained open for an additional fifteen days, pursuant to Delaware law, for the inclusion of additional public comment to the hearing record compiled in this matter. The record formally closed with regard to public comment on October 8, 2013. In light of the amount of comment, and the passion with which much of comment was given, the Department's Division of Air Quality ("DAQ") was asked to provide this Hearing Officer with a formal Technical Response Memorandum ("TRM"), which would set forth every comment received by the Department in this matter, along with DAQ's formal response to the same. This requested TRM was completed and submitted to this Hearing Officer, via email, on October 24, 2013.

The DAQ's TRM encompasses the full range of comment contained in the record, organized by subject matter of the comment, followed by the Department's formal response to the same. In response to each comment, the Department offered a thorough and rational discussion of the issues based on the record. After reviewing DAQ's TRM, it is my view that each comment was fully responded to by the Department by (1) identifying all of the relevant issues surrounding each comment; and (2) discussing the same in a through and balanced manner, accurately reflecting the information contained in the record. Therefore, rather than repeat the Department's TRM verbatim at this time, I am expressly incorporating the same into this Hearing Officer's Report, as well as attaching a copy of the TRM hereto.

In addition to expressly incorporating the Department's TRM into this report, in light of the importance of many of these issues, the following is a brief summary of the discussion set forth in the Department's Technical Response Document generated in this matter:

Contrary to concerns voiced by various members of the public during the course of this promulgation, the aforementioned adoption method does not "lock" Delaware to future changes adopted by California. If California makes any changes to its requirements, they will have no effect in Delaware because Delaware's proposal incorporates the California requirements as they exist on December 31, 2012. Each time that California makes a change to its requirements, Delaware will, in turn, evaluate that change, and propose to either adopt the new California requirement or revert to the

federal program. Either way, a regulatory revision will be necessary, subject to all of the provisions of 7 *Del.C.* Chapter 60 and 29 *Del.C.* Chapter 101.

Additional concern was raised by the public with regard to the burden placed on taxpayers should this proposed action be promulgated by the Department. Specific comments opined that to blame Delaware's pollution on auto emissions was not logical, and that the secondary cost to Delaware taxpayers would be obscene. In response to such comment, the Department seeks to adopt this regulation because Delaware has poor air quality, and auto emissions are a significant source of air pollutants in Delaware. The most recent emission inventory data for Delaware shows vehicle emissions have become the largest source of pollution in the state. Mobile sources in the on-road and off-road categories account for 91% carbon monoxide (CO) emissions, 64% in NO_x emissions, and 56% in VOC emissions, respectively.

As noted above, Delaware adopted the CA LEV II requirements in December 2010. California has since adopted CA LEV III requirements, and Delaware now has the option of either adopting the CA LEV III requirements or reverting to the federal program. Because mobile sources are becoming the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because CA LEV III requirements are reasonable and have greater emission benefit than the current federal program, the Department's Division of Air Quality recommends the adoption of CA LEV requirements. Given this, the Department believes that the adoption of California LEV III requirements is a reasonable means to reduce auto emissions.

With regard to other comments suggesting that the adoption of the CA LEV III will result in Delawareans traveling to other states (such as New Jersey) to purchase their cars because they will be less expensive (due to lesser pollution rules), it should be noted that the CA LEV III requirements have already been adopted in surrounding states, including New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, 10 other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut and Arizona. Vehicles purchased in any of these states must be certified to the CA LEV III emission standards. Additionally, if the Department chooses to adopt CA LEV III requirements, Delawareans may only register CA LEV III certified vehicles (or, vehicles certified as "50-state vehicles"), regardless of the state in which they choose to purchase the vehicle.

Responding again to the numerous comments received by the Department regarding the projected increased costs for a new vehicle in 2025, the Department has set forth the economics associated with the proposed revision to adopt the CA LEV III requirements. The estimated cost of CA LEV III was presented at the public hearing as $1,900.00 per vehicle price increase in 2025, due to technology upgrades. These increased costs will be further offset and result in a much greater savings from the improved fuel economy, resulting in a 3:1 savings over the projected increase. This estimated cost/savings was taken directly from work done by California when they adopted the LEV III requirements. CA LEV III is comprised of three main components: (1) a Greenhouse Gas ("GHG") component; (2) an exhaust/evaporative component; and (3) a Zero Emission Vehicle (ZEV) component. The Department proposal is to adopt the GHG and tailpipe/evaporative components, and to not adopt the ZEV component. Given

the cost concerns voiced in the public comments that were received, the Department has reviewed the California work again, and found that the aforementioned $1,900.00 cost (actually, $1,840.00, which the Department rounded up) included the ZEV component, which the Department is *not* proposing to adopt. Without the ZEV component, California estimated the cost of the CA LEV III program to be $170.00 per light-duty passenger vehicle in 2017, up to a maximum of $1,360.00 for light duty trucks in 2025.

It should also be noted that Delaware consumers will likely see this increase in cost in the near future in Delaware, regardless of whether CA LEV III requirements are adopted in Delaware. Because our neighboring states - Maryland, Pennsylvania and New Jersey - have all adopted CA LEV III, residents of these states can only purchase vehicles that meet CA LEV III standards. Should Delaware choose to not adopt CA LEV III, and the Delaware dealers inventoried non-LEV III vehicles, they could not sell them to residents of these border states. Because of this, Delaware dealers will more than likely inventory only CA LEV III cars, regardless of whether Delaware adopts CA LEV III. Furthermore, since all border states have adopted CA LEV III, only cars that meet CA LEV III standards may be sold in these states, so the Delaware adoption of CA LEV III will have no impact on cost to Delaware residents that purchase vehicles from surrounding states' dealerships. The Department notes that, from a practical standpoint, there will be no cost difference to Delaware citizens as a result of this action. Thus, the Delaware adoption of CA LEV III will have no impact on Delaware dealers, or on the vehicle cost to Delaware residents that purchase cars from Delaware dealers, beyond that of other states that have adopted LEV III requirements.

If, however, the Department chooses not to adopt CA LEV III requirements, Delaware citizens would be placed at a disadvantage relative to surrounding states, due to the fact that any car sold to a resident of a state that has adopted CA LEV III receives an extended 15 year, 150,000 mile warranty. Any car sold to a resident of a state that has not adopted CA LEV III, however, gets the standard 10 year, 120,000 mile warranty. The car is the same car, however, the warranty period is based upon the status of the resident's home state only. Delaware's adoption of CA LEV III benefits Delaware citizens by providing them with a better warranty, at no additional cost, simply because they will be purchasing a CA LEV III vehicle, regardless of whether Delaware adopts CA LEV III.

With regard to comments received by the Department concerning how increased repair costs were factored into the economic analysis, and the correlating impact of the increased warranty period on the final price of a vehicle, the Department notes that this comment asserts that CA LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost. The Department's Division of Air Quality maintains that the cost of any new technology needed to meet CA LEV III requirements is clearly factored into the California and EPA cost analysis, and the Department believes that the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier 3 Vehicle Emissions and Fuel Standards (March 2013) proposal that,

> "*...the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to*

anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon absorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible."

With respect to other concerns voiced at the time of the public hearing on September 23, 2013, one commenter stated that the adoption of these proposed amendments was viewed as a reversal of the Secretary's decision to adopt the California Low Emission Vehicle II standards. At that time, the Department failed to include the dates by which California had adopted the standards. One of the stated purposes of this action is to correct that previous error by removing the provisions of existing 7 DE Admin. Code 1140 that provide for the prospective incorporation by reference of future revisions made by California.

Additional comments were received by the Department in this matter which argued the existence of global warming (i.e., that the same does not exist), and questioned the need to reduce $PM_{2.5}$ and GHG emissions, as well as the health impacts of $PM_{2.5}$. In response, the Department believes that, although GHG help regulate the earth's temperature, an atmospheric increase in these gases has intensified the greenhouse effect, leading to climate change. Climate change threatens Delaware's economy, public health, air and water resources, infrastructure, and coastal resources, and can increase energy demand.

Governor Markell recently signed Executive Order 41 (Sept. 12, 2013, see http://governor.delaware.gov/orders/EO41.pdf) which, among other things, requires development of an implementation plan to maintain and build upon Delaware's leadership in responsibly reducing greenhouse gas emissions, including identifying appropriate interim goals. The Department is the lead agency in this effort to reduce GHG. In Delaware, the transportation sector is one of the largest contributors of greenhouse gases, producing close to 29% of all such emissions. The Department is committed to the reduction of GHG emissions from the transportation sector.

It should be noted that, in addition to the concerns noted within the public comment received by the Department as detailed above, numerous comment was also received which applaud the Markell Administration for proposing cleaner vehicle standards. Such comment indicated support for Delaware's adopting of the Low Emission Vehicle Program, and encouraged the Department to move forward expeditiously to finalize the adoption of the proposed amendments to 7 DE Admin. Code 1140.

The Department's exhibits demonstrate that the public and the regulated community have been adequately notified of this proposed regulatory action, and have had the opportunity to participate in the Department's regulatory development process. The Department has developed and maintained open communications with both the regulated community and the general public, has conducted a public workshop to fully vet this proposed promulgation, and has provided the public with complete and timely information through the Department's regulatory website for these proposed Amendments to 7 DE Admin. Code 1140.

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 regulation amendments are attached hereto as Appendix "A", and the same are expressly incorporated into this Hearing Officer's Report. Additionally, as noted previously, the Division of Air Quality's Technical Response Memorandum received by this Hearing Officer on October 24, 2013, which provides the Department's thorough responses to the public comment received in this matter, is attached hereto as Appendix "B", and the same is expressly incorporated into this Hearing Officer's Report as well.

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 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.

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 its proposed amendments to 7 DE Admin. Code 1140: *Delaware Low Emission Vehicle Program.* Accordingly, I recommend promulgation of this proposed amendment 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 both the public workshop 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 this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
5. The recommended *revised* Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the September 1, 2013, *Delaware Register of Regulations*;
6. The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to (1) remove the requirements that provide for prospective incorporation of revisions made by California; and (2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle (LEV) III standard and the Greenhouse Gas (GHG) standard for model years 2015 to 2025; and

7. Adopting these *revised* amendments will allow Delaware to receive omission reduction credits that it would otherwise not receive if it were not to adopt these measures, and Delaware residents purchase vehicles equipped with LEV III technology either in Delaware or from surrounding states;

8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

9. The Department's proposed amendments to this regulation, as initially published in the September 1, 2013 *Delaware Register of Regulations*, and as set forth as *revised* amendments within Appendix "A" hereto, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it 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

10. The Department shall submit the proposed *revised* 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

Ahear\ Reg.Amend.1140.LEV III 2013

APPENDIX "A"

1100 Division of Air Quality

1140 Delaware ~~National~~ Low Emission Vehicle Program

[~~XX/XX/2013~~][12/11/2013]

1.0 Purpose

1.1 The provisions of this regulation establish in Delaware a ~~LEV~~ Low Emission Vehicle (LEV) program, which incorporates the requirements of the California LEV program.

1.2 The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, **[~~and~~]** medium-duty passenger vehicles**[, and medium-duty vehicles]** subject to the California LEV program and delivered for sale in Delaware.

[~~XX/XX/2013~~][12/11/2013]

2.0 Applicability

2.1 Except as set forth in 2.3 of this regulation no person shall deliver for sale, offer for sale, sell, deliver, purchase, rent, acquire, receive, or register a new model year 2014 or subsequent model-year passenger car, light-duty truck, or medium-duty vehicle within Delaware unless the vehicle has been certified by CARB and has received a CARB Executive Order.

2.2 For the purposes of this regulation, it is presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of fewer than 7,500 miles has not been transferred to an ultimate purchaser.

2.3 The prohibitions contained in 2.1 of this regulation shall not apply to vehicles that are:

- 2.3.1 Held for daily lease or rental to the general public or engaged in interstate commerce, which are registered and principally operated outside of Delaware;
- 2.3.2 Test vehicles and emergency vehicles;
- 2.3.3 Acquired by a resident of Delaware for the purposes of replacing a vehicle registered to such resident, which vehicle was damaged, or became inoperative beyond reasonable repair, or was stolen while out of Delaware; provided that such replacement vehicle is acquired outside of Delaware at the time the previously registered vehicle was either damaged or became inoperative beyond reasonable repair or was stolen;
- 2.3.4 Transferred by inheritance;
- 2.3.5 Transferred by court decree;
- 2.3.6 Issued a certificate of conformity pursuant to the Clean Air Act and originally registered in another state by a resident of that state who subsequently establishes residence in Delaware;
- 2.3.7 Sold directly from one dealer to another dealer;
- 2.3.8 Sold for the purpose of being wrecked or dismantled;
- 2.3.9 Sold exclusively for off-highway use; or
- 2.3.10 Sold for registration outside of Delaware.
- 2.3.11 Military tactical vehicles.
- 2.3.12 Acquired by a Delaware resident serving in the armed forces while stationed in another state.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meanings unless the context clearly indicates otherwise.

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine or a system or engine modifications on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California-certified" (vehicle) means a vehicle having a valid Executive Order stating that the vehicle meets all applicable requirements under applicable sections of Title 13, CCR and approved for sale in California by CARB.

"California Air Resources Board or CARB" means the agency or its successor established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to Section 39003, California Health & Safety Code, as amended or supplemented.

"California low emission vehicle program" means the low emission vehicle program being implemented in the state of California, pursuant to the provisions of the Clean Air Act and the California Code of Regulations.

"CCR" means the California Code of Regulations.

"Certificate of conformity" means that document issued by California Air Resources Board, or the United States Environmental Protection Agency.

"Clean Air Act or CAA" means the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended and supplemented.

"Dealer" means any person actively engaged in the business of offering to sell, soliciting or advertising the sale, buying, transferring, leasing, selling or exchanging new motor vehicles and who has an established place of business.

"Delivered for sale" means vehicles that have received a bill of lading for sale in Delaware and are shipped, or are in the process of being shipped to a dealer in Delaware.

"Department" means the Delaware Department of Natural Resources and Environmental Control.

"Emergency vehicle" means any publicly owned vehicle operated by a peace officer in the performance of their duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls and any publicly owned authorized emergency vehicle used

by an emergency medical technician or –paramedic or any ambulance used by a private entity under contract with a public agency.

"Emission Control Label" means a paper, plastic, metal or other permanent material, welded, riveted or otherwise permanently attached to an area within the engine compartment (if any), or to the engine, in such a way that it will be visible to the average person after installation of the engine in all new vehicles certified for sale in California, in accordance with Title 13, California Code of Regulations Section 1965.

"Emission standards" mean specified limitations on the discharge of air contaminants into the atmosphere.

~~**"Engine family"** means the basic classification unit comprised of the engine and drive train configuration selected by a manufacturer and used for the purpose of certification testing.~~

"Environmental Performance Label" means a paper or plastic decal securely affixed by the manufacturer to a window of all passenger cars, light-duty trucks, and medium-duty passenger vehicles which disclose the global warming and smog score for the vehicle in accordance with Title 13, CCR Section 1965.

"Executive Order" means a document issued by CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of Title 13, CCR for the control of specified air contaminants from motor vehicles and is thereby certified for sale in California.

"Federal Fuel Economy and Environmental Label" means a Federal Label that is affixed by the manufacturer to a window on all 2013 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles and would deem automobile manufacturers compliant with the federal Economy and Environmental Label published in 40 CFR Parts 85, 86 and 600 as promulgated on July 6, 2011 as compliant with the California Environmental Performance Label requirements. The label must disclose the smog and global warming scores for the vehicle in accordance with Title 13, CCR Section 1965 and the "California Motor Vehicle Emission Control, Smog Index, and Environmental Performance Label Specifications."

"Fleet Average Emission" means a vehicle manufacturer's average vehicle emissions of all greenhouse gases, non-methane organic gases (NMOG), or NMOG plus oxides of nitrogen (NOx), as applicable, from all new vehicles delivered for sale or lease in Delaware in any model-year.

"Greenhouse Gas" means any of the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

"Greenhouse Gas Credit" means greenhouse gas credit.

"Greenhouse Gas Vehicle Test Group" means vehicles that have an identical test group, vehicle make and model, transmission class and driveline, aspiration method (e.g., naturally aspirated, turbocharged), camshaft configuration, valve train configuration, and inertia weight class.

"Gross vehicle weight rating or GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty Engine" means any engine used to propel a heavy-duty vehicle.

"Heavy-duty Vehicle" means a heavy-duty vehicle as defined at Title 13, CCR, Section 1900.

"Independent Low Volume Manufacturer" means a manufacturer that has been designated by CARB as an independent low volume manufacturer as defined at Title 13, CCR, Section 1900.

"Intermediate volume manufacturer" means a manufacturer that has been designated by CARB as an intermediate volume manufacturer as defined at Title 13, CCR, Section 1900.

"Large volume manufacturer" means a manufacturer that has been designated by the CARB as a large volume manufacturer as defined at Title 13, CCR, Section 1900.

"Light-duty truck" means any 2000 and subsequent model year motor vehicle certified to the standards in Title 13, CCR, Section 1961(a)(1), rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off- street or off-highway operation and use.

~~**"Light-duty truck-1 or LDT-1"** means a light-duty truck with a loaded vehicle weight of 3,750 pounds or less.~~

~~**"Light-duty truck-2 or LDT-2"** means a light-duty truck with a loaded vehicle weight of greater than 3,750 pounds and a gross vehicle weight of less than or equal to 8,500 pounds and includes medium-duty passenger vehicles when determining compliance with the greenhouse gas emission standards of this regulation.~~

"Loaded vehicle weight" means the vehicle curb weight plus 300 pounds.

~~**"Mail out"** means a widely distributed general correspondence issued by CARB whenever said board needs information from the public, or when it wishes to inform the public of new information.~~

"Manufacturer" means any independent low volume, small, intermediate or large volume vehicle manufacturer as defined at Title 13, CCR, Section 1900.

"Medium-duty passenger vehicle" means medium-duty passenger vehicle as defined at Title 13, CCR, Section 1900.

"Medium-duty vehicle" means medium-duty vehicle as defined at Title 13, CCR, Section 1900.

"Military tactical vehicle" means all land combat and transportation vehicles, excluding rail-based, which are designed for or are in use by any of the United States armed forces.

"Model year" ~~means model year as defined at 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 85.2304, as supplemented or amended, and incorporated herein by reference.~~ means, for each vehicle manufacturer the period which includes January 1 of the calendar year in which the model is first offered for sale

and ends December 31 of the final calendar year of sale or, if the manufacturer has no annual production period, the calendar year. In case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle or vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle engine" means a new engine in a motor vehicle.

"New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.

"Non-methane organic gas or NMOG" means the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"NMOG + NOx Credit" means non-methane organic gas plus oxides of nitrogen credit.

"Passenger car" means any motor vehicle designed primarily for transportation of individuals and having a design capacity of 12 individuals or fewer.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Placed in service" means having been sold or leased to an ~~ultimate purchaser~~ end-user and not to a dealer or other distribution chain entity, and having been individually registered for on-road use by the Delaware Division of Motor Vehicles.

"Recall" means: a manufacturer's issuing of notices directly to consumers that vehicles in their possession or control should be corrected; and/or a manufacturer's efforts to actively locate and correct vehicles in the possession or control of consumers.

"Recall Campaign" means that plan approved by the California Air Resources Board or the Department, by which the manufacturer will effect the recall of noncomplying vehicles.

"Sale or sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

"Secretary" means the Secretary of the Department.

"Small Volume Manufacturer" means a manufacturer that has been designated by the CARB as a small volume manufacturer as defined at Title 13, CCR, Section 1900.

"State" means the State of Delaware, unless otherwise specified.

"Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01, as supplemented or amended, and incorporated herein by reference.

"Test vehicle" means an experimental or prototype motor vehicle that appears to have very low emission characteristics, or a used motor vehicle within which an experimental motor vehicle pollution control device is installed, and which has also received a test vehicle or fleet permit from CARB.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"USEPA" means the United States Environmental Protection Agency.

"Vehicle identification number or VIN" means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

[~~XX/XX/2013~~][12/11/2013]

4.0 Emission certification standards

Each model year and subsequent motor vehicle subject to 2.1 of this regulation shall be California-certified.

[~~XX/XX/2013~~][12/11/2013]

5.0 ~~NMOG fleet-wide average exhaust emission requirement~~ New Vehicle Emission Requirements

5.1 ~~A manufacturer of model year 2014 or later passenger cars, light-duty trucks, or medium-duty vehicles delivered for sale in Delaware, shall demonstrate compliance with the NMOG fleet-wide average exhaust emission requirement of Title 13, CCR, Section 1961, which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation~~ No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck**[, and medium-duty vehicles,]** or medium-duty vehicle in Delaware unless the vehicle **[i]**s California-certified and complies with the following criteria:

5.1.1 the exhaust emission standards, as applicable in Title 13, CCR Section 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, or 1961.3 and

5.1.2 the environmental performance label requirements for 2014 and subsequent model year vehicles in accordance with Title 13, CCR, Section 1965, and

5.1.3 the evaporative emission standards in Title 13, CCR, Section 1976, and

5.1.4 the refueling emission standards in Title 13, CCR, Section 1978, and

5.1.5 the malfunction and diagnostic system requirements in Title 13, CCR, 1968.2, and

5.1.6 the assembly-line testing procedure requirements in Title 13, CCR, Section 2062, and

5.1.7 the specifications for fill pipes and openings of motor vehicle fuel tanks in Title 13, CCR, Section 2235.

~~5.2 A manufacturer may accrue NMOG credits and debits and use them in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.~~

[~~XX/XX/2013~~][12/11/2013]

6.0 ~~Vehicle Testing~~ Manufacturer Fleet Requirements

6.1 Each manufacturer shall meet the following fleet requirements for the new vehicles delivered for sale or lease in Delaware:

6.1.1 Effective for 2014 model-years, each manufacturer shall comply with the fleet average NMOG emission requirements and LEV II phase-in requirements for passenger cars and light-duty trucks which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation and, for 2014 and subsequent model-years, may earn and bank NMOG credits, both in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.

6.1.2 Effective for the 2015 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEVIII phase-in requirements for passenger cars, light-duty trucks and medium-duty vehicles, and may earn and bank NMOG + NOx credits as applicable, all in accordance with Title 13, CCR, Section 1961.2.

6.1.3 Effective for the 2014 through 2016 model-years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and for 2014 and subsequent model-years earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.1.

6.1.4 Effective for the 2017 and subsequent model years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and may earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.3.

~~6.1~~ 6.2 Each new vehicle model subject to 2.1 of this regulation shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections: 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, 1961.3, 1965, ~~1968.1,~~ 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2101, 2111, and 2235. A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the applicable Executive Order.

~~6.2~~ 6.3 Each manufacturer of a vehicle subject to 2.1 of this regulation shall conduct Inspection Testing and Quality Audit Testing in accordance with Title 13, CCR, Section 2062, and shall provide the test results to the Department upon request. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.

~~6.3~~ 6.4 Each new vehicle subject to 2.1 of this regulation, prior to being offered for sale in Delaware, shall meet the motor vehicle emission requirements of Title 13, CCR, Section 1961, as determined by compliance testing, conducted by CARB in accordance with Title 13, CCR, Sections 2101 through 2110, 2150, and 2151. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.

~~6.4~~ 6.5 For the purposes of detection and repair of vehicles subject to this regulation failing to meet the motor vehicle emission requirements of Title 13, CCR, Section 1961 the Department may conduct, after consultation with CARB, In-Use Vehicle Enforcement Testing in accordance with the protocol and testing procedures in Title 13, CCR, Section 2140. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.

[~~XX/XX/2013~~][12/11/2013]

7.0 Warranty

7.1 Each manufacturer of a vehicle subject to 2.1 of this regulation shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over its period of warranty coverage with all requirements of Title 13, CCR, Sections 2035 through 2038, 2040, and 2041.

7.2 Each manufacturer of a vehicle subject to 2.1 of this regulation shall submit to the Department, upon request, a ~~Failure of Emission-Related Components~~ Emission Warranty Information report as defined at Title 13, CCR, Section 2144.

7.3 For purposes of compliance with 7.2 of this regulation, a manufacturer may submit copies of the ~~Failure of Emission-Related Components~~ Emission Warranty Information report that are submitted to CARB.

[~~XX/XX/2013~~][12/11/2013]

8.0 Reporting and Record-Keeping Requirements

8.1 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, no later than May ~~March~~ 1 following the close of the model year, a report itemized by test group and emissions standard, documenting total new vehicle deliveries for sale or lease in Delaware. ~~of vehicles in each test group during that model year~~.

8.2 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, by no later than May ~~March~~ 1 following the close of the model year, a report, ~~prepared according to Title 13, CCR, Section 1961, calculating the NMOG fleet-wide average exhaust emission~~ itemized by test group and emission standard, that demonstrates the manufacturer has met the fleet requirements of Section 6.0 of this regulation for the model year just ended for vehicles delivered for sale in Delaware~~.~~

8.3 If a manufacturer wants to bank GHG, NMOG, or NMOG + NOx credits, the manufacturer shall submit annually to the Department, by no later than May 1 following the end of the model-year, a report which demonstrates that such manufacturer has earned GHG, NMOG, or NMOG + NOx credits in Delaware. Credits are to be calculated in the same manner as required by CARB.

~~8.3~~ 8.4 Beginning with the 2014 model year, each ~~manufacturer~~ dealer of a vehicle exempted under 2.3.7 of this regulation must keep records on all inter or intra-dealer trades of new 2014 or subsequent model-year vehicles that have not been certified by CARB and therefore have not received a CARB Executive Order, and these records shall be made readily available to the Department upon request.

[~~XX/XX/2013~~][12/11/2013]

9.0 Enforcement

9.1 Records to support any application, notice, report or amendment submitted to the Department under this regulation shall be maintained for a period of no less than five years after submitting the information to the Department, and shall be made readily available to the Department upon request.

9.2 Failure to comply with any of the obligations or requirements of this regulation shall subject the violator to an enforcement action pursuant to the provisions of 7 **Del. C.** Ch 60.

9.3 Any order or enforcement action taken by CARB to correct noncompliance with any section of Title 13, CCR, which action results in the recall of any vehicle pursuant to Title 13, CCR, sections 2109 through 2135, shall be applicable in Delaware, except where the manufacturer demonstrates to the Department's satisfaction within 30 days of issuance of the CARB action that the action is not applicable to vehicles subject to this regulation.

9.4 Any emission-related recall campaign, voluntary or otherwise, initiated by any manufacturer pursuant to Title 13, CCR, Sections 2113 through 2121, shall extend to all similar vehicles subject to 2.1 of this regulation, except where the manufacturer demonstrates to the Department's satisfaction within 30 days of CARB approval of the campaign that the campaign is not applicable to vehicles subject to 2.1 of this regulation.

[~~XX/XX/2013~~][12/11/2013]

10.0 Incorporation by Reference

10.1 Unless specifically excluded by this regulation, when a provision of the CCR is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.

10.2 ~~Prospective incorporation by reference means the ongoing process, whereby all provisions of regulations incorporated into this regulation from the CCR, as set forth in Table 40-1, are continually automatically updated in order to maintain consistency with the most current CCR. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a California rule, brought about by either judicial or administrative action and adopted or otherwise noticed by the state of California, shall be paralleled by a similar change to the Delaware regulation so that the Delaware regulation will have the same meaning and status as its California counterpart.~~ The Low Emission Vehicle Program at **7 DE Admin C 1140**, refer to various section of Title 13 of the California Code of Regulations (CCR). Wherever **7 DE Admin C 1140** refers to a specific section of the CCR, the reference is made to that version of the § as of the amended date provided for that section in **7 DE Admin C 1140**: *Table 40-1*. The Department hereby incorporates by reference each of the section of Title13 CCR that are listed in Table 1 as of such § respective Amended Date.

10.3 Provisions of the CCR that are excluded from incorporation by reference in this regulation are excluded in their entirety, unless otherwise specified. If there is a cross-reference to a California citation that was not specifically incorporated, the cross-referenced citation is not incorporated by virtue of the cross-reference. ~~Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.~~

10.4 Nothing in these provisions incorporated by reference from the CCR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Secretary.

10.5 The following documents and sources of Title 13 of the California Code of Regulations (CCR) are incorporated by reference within this regulation:

Table 40-1

California Code of Regulations (CCR) Title 13

Provisions Incorporated by Reference

Title 13, CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions		
Section 1900	Definitions	*As effective December 31, 2012*
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	*As effective December 31, 2012*

Title 13, CCR	Title	Section Amended Date
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	*As effective December 31, 2012*
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 ~~and Subsequent~~ Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	*As effective December 31, 2012*
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 ~~and Subsequent~~ Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	*As effective August 7, 2012*
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	*As effective December 31, 2012*
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	*As effective December 31, 2012*
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	*As effective August 7, 2012*
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	*As effective November 27, 1999*
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	*As effective August 7, 2012*
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	*As effective August 7, 2012*
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	*As effective December 31, 2012*
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	*As effective August 7, 2012*
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	*As effective November 9, 2007*

Title 13, CCR	Title	Section Amended Date
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	*As effective May 15, 1999*
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	*As effective August 7, 2012*
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	*As effective August 7, 2012*
Section 2039	Emission Control System Warranty Statement	*As effective December 26, 1990*
Section 2040	Vehicle Owner Obligations	*As effective December 26, 1990*
Section 2041	Mediation; Finding of Warrantable Condition	*As effective December 26, 1990*
Section 2046	Defective Catalyst	*As effective February 15, 1979*
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	*As effective August 7, 2012*
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	*As effective December 8, 2010*
Section 2109	New Vehicle Recall Provisions	*As effective December 30, 1983*
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	*As effective November 27, 1999*
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	*As effective December 8, 2010*
Section 2112	Definitions	*As effective August 7, 2012*
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	*As effective January 26, 1995*
Section 2114	Voluntary and Influenced Recall Plans	*As effective November 27, 1999*

Title 13, CCR	Title	Section Amended Date
Section 2115	Eligibility for Repair	As effective January 26, 1995
Section 2127	Notification of Owners	As effective January 26, 1995
Section 2128	Repair Label	As effective January 26, 1995
Section 2129	Proof of Correction Certificate	As effective January 26, 1995
Section 2130	Capture Rates and Alternative Measures	As effective November 27,1999
Section 2131	Preliminary Tests	As effective January 26, 1995
Section 2132	Communication with Repair Personnel	As effective January 26, 1995
Section 2133	Record keeping and Reporting Requirements	As effective January 26, 1995
Section 2135	Extension of Time	As effective January 26, 1995
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	As effective January 8, 2008
Section 2137	Vehicle Selection	As effective December 28, 2000
Section 2138	Restorative Maintenance	As effective November 27, 1999
Section 2139	Testing	As effective August 7, 2012
Section 2140	Notification of In-Use Results	As effective August 7, 2012
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	As effective December 8, 2010
Section 2142	Alternative Procedures	As effective February 23, 1990
Section 2143	Failure Levels Triggering Recall	As effective November 27, 1999
Section 2144	Emission Warranty Information Report	As effective November 27, 1999
Section 2145	Field Information Report	As effective August 7, 2012
Section 2146	Emissions Information Report	As effective November 27, 1999
Section 2147	Demonstration of Compliance with Emission Standards	As effective August 7, 2012
Section 2148	Evaluation of Need for Recall	As effective November 27, 1999
Section 2149	Notification of Subsequent Action	As effective February 23, 1990
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	As effective December 30, 1983
Section 2151	New Motor Vehicle Dealer Surveillance	As effective December 30, 1983
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	As effective August 7, 2012

[~~XX/XX/2013~~][12/11/2013]
11.0 Document Availability

Any of the documents incorporated by reference may be obtained either from the Department or from the State of California Office of Administrative Law, 300 Capitol Mall,

Suite 1250 Sacramento, California 95814-4339 or at the California Office of Administrative Law website at: http://www.oal.ca.gov/

[~~XX/XX/2013~~][12/11/2013]
12.0 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

~~14 DE Reg. 583 (12/01/10)~~

APPENDIX "B"

MEMORANDUM

To: Lisa Vest, Hearing Officer

Through: Ali Mirzakhalili AM 10/24/13
Ron Amirikian raa 10/22/13
Valerie Gray vag 10/22/13

From: Deanna Cuccinello dmc 10/21/13

Re: Department's Response to Comments received on the proposed amendments to 7 DE Admin Code 1140 – *Low Emission Vehicle Program.*

You presided over a public hearing on Monday, September 23, 2013 beginning at 6:00 PM in DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. The subject of that public hearing was a proposed revision to 7 DE Admin. Code 1140 – Low Emission Vehicle Program. The Department received comments from the following:

Date Received	Name	Organization
9/23/2013	Julia Rege	Global Automakers
9/23/2013	rnfield@countrypropaneonline.com (No name submitted)	private citizen
9/23/2013	Richard Timmons	private citizen
9/23/2013	Arron Wright	private citizen
9/23/2013	John Nichols	private citizen
9/24/2013	John Nichols	Private citizen
9/24/2013	Linda Shinn	private citizen
9/25/2013	Joseph Fulgham	Minority Causcus
9/27/2013	77whitebronco@gmail.com (No name submitted)	private citizen
9/27/2013	Robert Wrieden	private citizen
9/28/2013	jm3de7736@aol.com (No name submitted)	private citizen
9/29/2013	James F Canalichio	private citizen
9/30/2013	Martin Shuey	private citizen
9/30/2013	George Brown	private citizen
9/30/2013	Eileen Boyle	private citizen
10/1/2013	Matt Schlitter	private citizen
10/2/2013	Sabine Buergermeister	via Sierra Club
10/2/2013	John Jacobs	via Sierra Club
10/2/2013	Kathleen Eaton	via Sierra Club
10/2/2013	Mark Jolly-Van Dodgraven	via Sierra Club
10/2/2013	Linda Jacobs	via Sierra Club
10/2/2013	Robin Coventry	via Sierra Club
10/2/2013	Kimberly Frey	via Sierra Club
10/2/2013	Ken Reynolds	via Sierra Club

10/2/2013	Gail Yborra	via Sierra Club
10/2/2013	Joanne Stickel	via Sierra Club
10/2/2013	John Irwin	via Sierra Club
10/2/2013	Rue Wingo-Lam	via Sierra Club
10/2/2013	Josh Becker	via Sierra Club
10/2/2013	Li Sandra Nazario	via Sierra Club
10/2/2013	Nancy O	via Sierra Club
10/2/2013	Scott Bayne	via Sierra Club
10/2/2013	Jim Black	via Sierra Club
10/2/2013	Kristine Cassar	via Sierra Club
10/2/2013	Grace Nasseh	via Sierra Club
10/2/2013	Clara Thomas	via Sierra Club
10/2/2013	Charles Pierson	via Sierra Club
10/2/2013	Susan Reamer	via Sierra Club
10/2/2013	Martha Black de Frias	via Sierra Club
10/2/2013	Gregg Mccauley	via Sierra Club
10/2/2013	John Sykes	via Sierra Club
10/2/2013	Lita Hetherington	via Sierra Club
10/2/2013	Ramsay Kieffer	via Sierra Club
10/2/2013	Robert Klahn	via Sierra Club
10/2/2013	Eric Plaisance	via Sierra Club
10/2/2013	Leamon Hood	via Sierra Club
10/2/2013	David Guinnup	via Sierra Club
10/2/2013	Jared Cornelia	via Sierra Club
10/2/2013	Kris Manners	via Sierra Club
10/2/2013	Joan Bleakly	via Sierra Club
10/2/2013	Jason Breeding	via Sierra Club
10/2/2013	Elizabeth Zarek	via Sierra Club
10/2/2013	Mirjam Koesterke	via Sierra Club
10/2/2013	Iris Barrton	via Sierra Club
10/2/2013	Steve Douglas	Auto Alliance
10/3/2013	Edith Coleman	via Sierra Club
10/3/2013	Lisa Gosnell	via Sierra Club
10/3/2013	Katharine Rivera	via Sierra Club
10/3/2013	Doug Rawling	via Sierra Club
10/3/2013	Dora Jackson	via Sierra Club
10/3/2013	Kate Jarnal	via Sierra Club
10/3/2013	David Chandler	via Sierra Club
10/3/2013	Max Haggerty	via Sierra Club
10/3/2013	Milagros Pistritto	via Sierra Club
10/3/2013	Jaya Bali	via Sierra Club
10/3/2013	Nancy Geller	via Sierra Club
10/3/2013	Philip Fuski	via Sierra Club

10/3/2013	Nicole Catalina	via Sierra Club
10/3/2013	Sharon Stevenson	via Sierra Club
10/3/2013	Rhonda Brittingham	via Sierra Club
10/3/2013	Denis Dellaloggia	via Sierra Club
10/3/2013	Tricia Herron	via Sierra Club
10/3/2013	Julia Mercier	via Sierra Club
10/3/2013	Carol Collins	via Sierra Club
10/3/2013	Majed Subh	via Sierra Club
10/4/2013	Bruce Abbott	via Sierra Club
10/5/2013	Julia Taeuber	via Sierra Club
10/7/2013	Bethany Hall-Long	DE Senator
10/8/2013	Josh Miller	private citizen
10/8/2013	Aaron Wright	private citizen
10/8/2013	Steve Wright	private citizen
10/8/2013	Thurman Brendlinger	Clean Air Council
10/8/2013	Barbara Reader	private citizen

This memorandum provides a summary of the comments received and the Division of Air Quality (DAQ) response. Each comment received is included verbatim as an attachment.

I. General Comments Received

Comment 1

The commenter was concerned that the adoption of these amendments would "lock" Delaware to any future changes adopted by California.

Department Response

The Clean Air Act (CAA) establishes the framework for controlling mobile source emissions. Section 209 of the CAA allows California to regulate tailpipe emission from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of CA LEV II requirements. California has revised their LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, 1) adopt the CA LEV III requirements, or 2) revert to the federal program.

This proposal is to adopt the CA LEV III standards. This is being done by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on 12/31/12.

This adoption method does not "lock" Delaware to future changes adopted by California. If California makes any changes to its requirements they will have no effect in Delaware because Delaware's proposal incorporates the CA requirements as they exist on 12/31/12. Every time CA makes a change to their requirements Delaware in turn will evaluate that change, and propose to either adopt the new CA requirement or revert to the federal program. Either way a regulatory revision will be necessary, subject to all of the provisions of 7 DE Code Chapters 60 and 101.

See also the related response to Comment 3 below.

Comment 2

The commenter stated that blaming pollution on auto emissions was not logical and the secondary cost to Delaware taxpayers would be obscene.

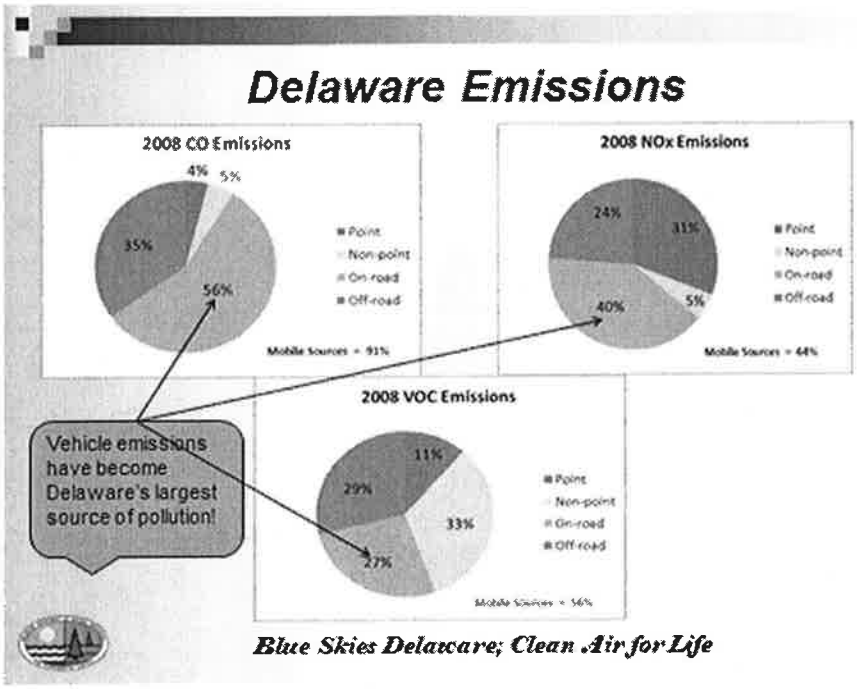
Department Response

The Department is proposing to adopt this regulation because Delaware has poor air quality, auto emissions are a significant source of air pollutants in Delaware, and the adoption of CA LEV III requirements is a reasonable means to reduce auto emissions.

Delaware has poor air quality: Delaware air quality is designated as not meeting the health based standards for ozone and fine particulate matter ($PM_{2.5}$). Ozone is generally not directly emitted, but rather forms in the atmosphere when volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions react in the presence of heat and sunlight. $PM_{2.5}$ is directly emitted, and also forms in the atmosphere through reactions of VOC, NOx, and sulfur dioxide (SO_2).

Delaware has aggressively regulated VOC and NOx emissions, and has reduced overall statewide VOC and NOx emissions by about 70% each, from a 1990 baseline. Large reductions in direct $PM_{2.5}$ and SO_2 have also occurred as a result of Delaware regulations.

Auto emissions are significant: The most recent emission inventory data for Delaware shows vehicle emissions have become the largest source of pollution in the state. Mobile sources in the on-road and off-road categories account for 91% carbon monoxide (CO) emissions, 64% in NOx emissions, and 56% in VOC emissions, respectively. From the Department's presentation at the public hearing:



Adoption of CA LEV III is reasonable: Delaware adopted the CA LEV II requirements in December 2010. CA has since adopted CA LEV III requirements, and Delaware now has the option of either adopting the CA LEV III requirements or reverting to the federal program. Because mobile sources are the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because CA LEV III requirements are reasonable and have greater emission benefit than the current federal program, DAQ recommends the adoption of CA LEV III requirements.

Responses to comments associated with costs are provided in Section III below.

Comment 3

A commenter at the public hearing was concerned that the adoption of these amendments was viewed as a reversal of the Secretary's decision to adopt the California Low Emission Vehicles II standards. At the time, the Department failed to include the dates by which California had adopted the standards.

Department Response

This comment is referring to an error made by the Department in its December 2010 adoption of the CA LEV II requirements. One of the purposes of this action is to correct this error by removing the provisions of 7 DE Admin. Code 1140 that provide for the prospective incorporation by reference of future revisions made by California.

Comment 4

Commenter stated that he will buy his car(s) 5 miles away in New Jersey where the cars will be cheaper, less pollution rules.

Department Response

DAQ cannot not confirm that the commenter may or may not be able to purchase cars in New Jersey cheaper, but it does not agree that New Jersey has less restrictive vehicle emission rules. New Jersey has already adopted CA LEV III requirements.

The CA LEV III requirements have already been adopted in surrounding states including New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, ten other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut, and Arizona. Vehicles purchased in any of these states must be certified to the CA LEV III emission standards.

In addition, if this proposal to adopt CA LEV III requirements is finalized, Delawareans may only register CA LEV III certified vehicles (or vehicles certified as 50-state vehicles), regardless of the state they choose to purchase the vehicle.

Comment 5
The Department received numerous comments that applaud the Markell Administration for proposing cleaner vehicle standards. The letters indicate support for Delaware's adoption of the Low Emission Vehicle Program and encourage the Department to move forward expeditiously to finalize the adoption of the amendments to 7 DE Admin Code 1140.

Department Response
The Department agrees with the commenters, appreciates the support and recommends that the standards be promulgated.

II. Comments Received Regarding the Environmental & Health Benefits of the Proposal

Comment 6
The commenter stated that Global warming does not exist.

Department Response
Although Greenhouse gases help regulate the earth's temperature, the Department believes that an atmospheric increase in these gases has intensified the greenhouse effect, leading to climate change. Climate change threatens Delaware's economy, public health, air and water resources, infrastructure, and coastal resources and can increase energy demand.

Governor Jack Markell recently signed Executive Order 41 (State of Delaware – "Executive Order 41" dated September 12, 2013. Retreived from http://governor.delaware.gov/orders/EO41.pdf) which, among other things, requires development of an implementation plan to maintain and build upon Delaware's leadership in responsibly reducing greenhouse gas emissions, including identifying appropriate interim goals. The Department is the lead agency in this effort to reduce GHG.

In Delaware, the transportation sector is one of the largest contributors of greenhouse gases, producing close to 29% of all such emissions. The Department is committed to reduce greenhouse gas emissions from the transportation sector.

Comment 7
During the public hearing, one commenter stated that $PM_{2.5}$ and Greenhouse gas (GHG) emissions are dropping because of the conversion to natural gas and because the economy is in the doldrums. The commenter questioned how the health benefits of $PM_{2.5}$ and GHG were determined when, by the EPA's own experiments they couldn't generate any health impacts associated with such high level of exposures to 41 test subjects.

Department Response
This comment is appears to mainly question the need to reduce $PM_{2.5}$ and GHG emissions, and the health impacts of $PM_{2.5}$.

The need to reduce $PM_{2.5}$ and GHG emissions are addressed in the responses to Comment 2 and Comment 6 above.

Debating the health impacts of $PM_{2.5}$ was not the subject of this public hearing. Despite this, the Department is required, by the Clean Air Act, to attain and maintain the all federally established National Ambient Air Quality Standards (NAAQS). The EPA established a $PM_{2.5}$ NAAQS because it determined that $PM_{2.5}$ particles pose a serious public health problem. Exposure to $PM_{2.5}$ can cause premature death and harmful effects on the cardiovascular and respiratory system. People most at risk from $PM_{2.5}$ pollution include people with diseases that affect the heart or lung, older adults, children, and people of lower socioeconomic status. New Castle County, Delaware is currently designated by the EPA as not meeting the health based $PM_{2.5}$ NAAQS. The Department concludes that the existence of the $PM_{2.5}$ NAAQS, and all of the associated EPA supporting documentation, form an adequate basis to conclude that $PM_{2.5}$ is harmful to public health.

Comment 8

The commenter stated concern for the environment, but noted that this regulation would still not save the environment. The commenter believes that the Department should focus on electrical generation and increases in lead and mercury.

Department Response

This amendment to 7 DE Admin Code 1140 – Low Emission Vehicle Program is one of many strategies that ensure Delaware emission sources are well controlled. The Department regulates emissions from electrical generation and increases from lead and mercury under other regulations that are not the subject of this public hearing. Despite this, the Department notes that emission controls on electrical generation in Delaware are among the best in the country.

7 DE Admin. Code 1146, adopted in 2006, regulates NOx, SO_2, and Hg from all coal or oil fired electric generating units (EGUs) in the state, on a unit-by-unit basis. Regarding lead, EPA adopted a new health based lead standard in 2008, and based on source and ambient monitoring data Delaware's air quality meets this standard.

At this time the DAQ does not have any data that indicates further action on its electrical generation, lead or mercury emitting sources is necessary.

III. Comments Received Regarding the Cost Benefit Analysis

Comment 9

The Department received numerous comments regarding the projected increased costs for a new vehicle in 2025. Many felt the costs to be too expensive for Delaware consumers to pay for cleaner more fuel efficient vehicles.

Department Response:

In response to these comments the Department is providing the economics associated with the proposed revision to adopt the CA LEV III requirements. The estimated cost of CA LEV III was presented at the public hearing as a $1,900 per vehicle price increase in 2025 due to technology upgrades, along with a much greater savings from the improved fuel economy. This estimated cost/savings was taken directly from work done by CA when they adopted the LEV III requirements. CA LEV III is comprised of three main components, 1) a

GHG component, 2) an exhaust/evaporative component, and 3) a ZEV component. The Department proposal is to adopt the GHG and tailpipe/evaporative components, and to not adopt the ZEV component. The Department has reviewed the CA work again, and found that this $1,900 cost (actually $1,840 rounded up) included the ZEV component, which the Department is not proposing to adopt. Without the ZEV component CA estimated the cost of the CA LEV III program to be $170 per vehicle in 2017 up to a maximum of $1,360 for light duty trucks in 2025.

While the Department does believe this information is accurate, the economics of CA LEV III adoption in DE may be better evaluated in light of a final rule issued by the EPA that requires GHG reductions that are in harmony with CA LEV III (see 77 FR 62624). In EPA's final rule the EPA estimates the costs of its GHG program to be $1,800 per vehicle. And like CA the EPA calculate a net savings to the consumer from the GHG component, due to fuel savings being much greater than the cost of vehicle technology upgrades. Given that the GHG component is now a federal requirement the cost and savings associated with it, relative to Delaware's adoption of CA LEV III, is moot; and the overall impact in DE is better evaluated based on the exhaust/ evaporative component. The EPA has proposed but not yet finalized Tier III requirements that are in harmony with CA LEV III tailpipe/evaporative standards. The EPA has estimated the cost of Tier III to range from $78 for passenger cars in 2016 up to a maximum cost at $165 for light duty trucks in 2025. So, relative to the current federal baseline, the proposed adoption of CA LEV III in Delaware will more likely add between $78 and $165 to the cost of a new vehicle, depending on the vehicle type and model year.

Note that Delaware consumers will likely see this increase in cost regardless of whether or not CA LEV III requirements are adopted. Because Maryland, Pennsylvania and New Jersey have all adopted CA LEV III, residents of these states can only purchase vehicles that meet CA LEV III standards. If Delaware did not adopt CA LEV III and the Delaware dealers inventoried non-LEV III vehicles they could not sell them to residents of these border states. Because of this Delaware dealers will more than likely inventory only CA LEV III cars regardless of whether Delaware adopts CA LEV III. So, the Delaware adoption of CA LEV III will have no impact on Delaware dealers, or the vehicle cost to Delaware residents that purchase cars from Delaware dealers. Further, since all border states have adopted CA LEV III, only cars that meet CA LEV III standards may be sold in these states, so the Delaware adoption of CA LEV III will have no impact on cost to Delaware residents that purchase vehicles from surrounding states' dealers. From a practical standpoint the Department believes that there will be no cost difference to Delaware citizens as a result of this action.

If the Department does not adopt CA LEV III requirements Delaware citizens will, however, be placed at a disadvantage relative to surrounding states. This is because any car sold to a resident of a state that has adopted CA LEV III gets an extended 15 year, 150,000 mile warranty. Any car sold to a resident of a state that has not adopted CA LEV III gets the standard 10 year, 120,000 mile warranty. The car is the same car; the warranty period keys off of the status of the resident's state only. Delaware adopting CA LEV III benefits Delaware citizens by giving them a better warranty, at no additional cost (since they will be purchasing a CA LEV III vehicle regardless of whether Delaware adopts CA LEV III).

In summary, in light of current Federal requirements and Delaware's geographical location the Department believes that this action will have no practical impact on the price of cars in Delaware, and will have a positive impact relative to overall consumer cost and warranty protection.

Comment 10

During the public hearing, one commenter asked about the assumptions supporting the conclusions in the PowerPoint presentation, specifically - the number of miles driven per month, the overall lifetime of the vehicle, the price of fuel for the 2025 estimate as well as the economic impact when the regulations initially go into effect in 2015.

Department Response

The commenter was provided a verbal response from the Department at the public hearing. The Department used California's Initial Statement of Reasons as a guidance document (California Air Resources Board – "Initial Statement of Reasons" dated December 11, 2011. Retrieved from http://www.arb.ca.gov/regact/2012/leviiighg2012/leviiighg2012.html.) Emissions data calculations and costs were compiled using the best methods and measurements available at the time.

Comment 11

During the public hearing, one commenter asked how increased repair costs were factored into the economic analysis and the impact of the increased warranty period on the final price of a vehicle.

Department Response

This comment is asserting that CA LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost, and is asking if this increased cost is factored into the economic analysis.

The cost of any new technology needed to meet CA LEV III requirements is clearly factored into the CA and EPA analysis discussed under Comment 9 above. It does not, however, appear that any increased repair costs were factored in for the following reasons:

In general, the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier III proposal that,

> "*…the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon adsorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible.*"

This indicates that the technology needed to meet CA LEV III requirements would not be more costly to repair and maintain except for possibly the most difficult powertrain applications.

Regarding the cost of the increased warranty period, from 120,000 to 150,000 miles; this is factored into the final price of the vehicle in the CA economic analysis. This is discussed under Comment 9 above. See also additional information regarding the Department's analysis in the Department's Technical Support Document (DNREC Exhibit #7) and California's Initial Statement of Reasons (California Air Resources Board – "Initial Statement of Reasons" dated December 11, 2011. Retrieved from http://www.arb.ca.gov/regact/2012/leviiighg2012/leviiighg2012.html.)

Comment 12

The commenter stated concern regarding the projected increased cost to new vehicles in 2025: "*I do not need to spend more money on purchasing vehicles in this state*". DNREC's position that we will still have choices is not true when numbers are established requiring certain purchases of electric vehicles.

Department Response

The cost of vehicles is addressed in response to Comment 9 above.

Regarding the comment that consumers will not have choices in the vehicle they purchase because the purchase of electric vehicles is required, the Department does not agree. The proposed amendments do not establish a requirement for electric vehicles purchases by consumers.

Comment 13

A commenter referred to a PBS report that the projected increase to a new vehicle would $3,000 to the cost of the vehicle which he equated to a 6% tax increase.

Department Response

The commenter did not submit specific documentation on the PBS report he referred to in his comments. The commenter provided a copy of a January 11, 2011 Washington Times article by John Nichols entitled: "*NICHOLS: California dreaming – or nightmare*?" The article mentions "*industry experts say the regulations will add $3000 to the up-front cost of the average car or truck*".

As such, it is difficult for the Department to address their cost analysis of the Low Emission Vehicle Program.

An internet search for the PBS report did, however, suggest that a report as presented by PBS in 2005 (see PBS NEWSHOUR – "Clearing the Air" transcript dated March 28, 2005. Retrieved from http://www.pbs.org/newshour/bb/environment/jan-june05/california_3-28.html) refers to a suggested price increase provided by Congressman John Dingell (D-MI) in response to California's proposed adoption of GHG standards. The GHG motor vehicle standards have been adopted and harmonized with the federal standards – see USEPA Transportation &

Climate website for the Light-Duty Vehicle standards at http://www.epa.gov/otaq/climate/regs-light-duty.htm#new1.

The cost benefits analysis for the proposed amendments as provided in the Technical Support Document and the California Initial Statement of Reasons reflects the most recent up to date data as provided by the auto manufacturers to California for their 2012 rulemaking. The analysis is further supported by USEPA's regulatory impact assessment conducted for the joint EPA/NHTSA Final Rulemaking to Establish 2017 and Later Model Years Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards (see Chapter 5 - http://www.epa.gov/otaq/climate/documents/420r12016.pdf). In both analyses the [fuel] cost savings greatly outweigh the program costs.

IV. Global Automakers

Comment 14

Global Automakers supports harmonized national programs for improving fuel economy and reducing greenhouse gases (GHG) and criteria pollutant emissions. ... In light of the harmonization between EPA's and California's programs for MY2012-2025 GHG standards, as well as the upcoming criteria pollutant harmonization between the LEV III and Tier 3 programs, we believe it is not necessary for Delaware to adopt the proposed regulations.

Department Response

Under the Clean Air Act, Delaware has the option of the federal vehicle emissions standards or those standards established by California. The DAQ agrees that the proposed amendments to 7 DE Admin. Code 1140 are very similar to the Tier 3 requirements proposed by the EPA however, the Federal Tier 3 program has not been finalized.

Furthermore, if finalized the Federal Tier 3 requirements are not expected to go into effect until model year 2017. The Delaware LEV III program will go into effect with model year 2015, providing two additional years of credit that Delaware can rely on in meeting air quality standards.

Comment 15

Global Automakers recommends a minor edit, the addition of the letter "i", to the following text, as shown in red, underlined and bolded text:

No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:the following attachment

Department Response

The Department is in agreement and recommends this typographical error be corrected.

V. Auto Alliance

Comment 16
The Auto Alliance noticed that in some places in the regulation the Department changed "Medium Duty Vehicle" (MDV) to "Medium Duty **Passenger** Vehicle," (MDPV) while in other places that change was not made. The Auto Alliance noted the following:

Section 2.0 Applicability

2.1 Except as set forth in 2.3 of this regulation no person shall deliver for sale, offer for sale, sell, deliver, purchase, rent, acquire, receive, or register a new model year 2014 or subsequent model-year passenger car, light-duty truck, or *medium-duty vehicle* within Delaware unless the vehicle has been certified by CARB and has received a CARB Executive Order.

Section 3.0 Definitions

"Medium-duty passenger vehicle" means *medium-duty vehicle* as defined at Title 13, CCR, Section 1900.

Section 5.0 NMOG fleet average

No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck or *medium-duty vehicle* in Delaware unless the vehicle s California-certified and complies with the following criteria:

Section 6.0

6.1.2 Effective for the 2015 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEVIII phase-in requirements for passenger cars, light-duty trucks and *medium-duty vehicles*, and may earn and bank NMOG + NOx credits as applicable, all in accordance with Title 13, CCR, Section 1961.2.

Department Response
The Department appreciates the comments noted by the Auto Alliance. The Department did not intend to exempt Medium-Duty Vehicles from complying with the regulation. Section 1.2 of 7 DE Admin Code 1140 should have included medium-duty vehicles. The Department will also correct a typographical error noted in Section 5.0.

VI. Department's Recommended Changes to 7 DE ADMIN CODE 1140

Based on these comments received, the DAQ recommends that 7 DE Admin. Code 1140 be adopted, with the following minor changes to the proposed regulatory language:

- Section 1.2 should now read as follows:

  The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, ~~and~~ medium-duty passenger vehicles**, and medium-duty vehicles** subject to the California LEV program and delivered for sale in Delaware.

- Section 5.1 should now read as follows:

  5.1 No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck**, medium-duty passenger vehicle,** or medium-duty vehicle in Delaware unless the vehicle **is** California-certified and complies with the following criteria:

Attachments

PC: Ali Mirzakhalili
Ronald A. Amirikian
Valerie A. Gray
Dover file